

# **EXHIBIT 2**

Case No. 14-CV-704-GKF-JFJ

1                   IN THE UNITED STATES DISTRICT COURT  
2                   FOR THE NORTHERN DISTRICT OF OKLAHOMA  
3  
4                   UNITED STATES OF AMERICA,  
5  
6                   Plaintiff,  
7  
8                   and  
9                   OSAGE MINERALS COUNCIL,  
10                  Intervenor-Plaintiff,  
11                 vs   No. 14-CV-704-GKF-JFJ  
12                 OSAGE WIND, LLC,  
13                 ENEL KANSAS, LLC;  
14                 and ENEL GREEN POWER  
15                 NORTH AMERICA, INC.,  
16                 Defendants.

17                 VIDEOTAPED DEPOSITION OF BILL PRICE  
18                 Taken on Behalf of the Intervenor-Plaintiff  
19                 On July 21, 2021, beginning at 5:03 a.m.  
20                 All Parties Appearing Via Webconference

21   APPEARANCES  
22                 Appearing on behalf of the PLAINTIFF:  
23                 Cathryn D. McClanahan  
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                  Appearances Continued on Next Page  
VIDEOTAPED BY: Megan Smith  
REPORTED BY: MARY K. BECKHAM, CSR, RPR

<p>Page 2</p> <p>1 APPEARANCES Continued</p> <p>2 Appearing on behalf of the INTERVENOR-PLAINTIFF, OSAGE MINERALS COUNCIL:</p> <p>3 Mary Kathryn Nagle Shoney Blake</p> <p>4 PIPESTEM &amp; NAGLE 1333 New Hampshire Avenue N.W. Washington, D.C. 20036 202-407-0591 mknagle@pipestemlaw.com</p> <p>7 Appearing on behalf of the WITNESS, BILL PRICE, INTERVENOR-PLAINTIFF and DEFENDANT, OSAGE WIND, LLC, 8 ENEL KANSAS, LLC and DEFENDANT, ENEL GREEN POWER NORTH AMERICA, INC.:</p> <p>9 Thomas J. McCormack Robert Kirby</p> <p>10 NORTON ROSE FULBRIGHT US LLP 1301 Avenue of the Americas New York, New York 10019-6022 212-408-5182</p> <p>12 thomas.mccormack@nortonrosefulbright.com robert.kirby@nortonrosefulbright.com</p> <p>13 and Sarah M. Stevenson</p> <p>14 MODRALL, SPERLING, ROEHL, HARRIS &amp; SISK, P.A. Post Office Box 2168 Albuquerque, New Mexico 87103-2168 505-848-1800 sarah.stevenson@modrall.com</p> <p>17</p> <p>18</p> <p>19 Also present: Christina Watson, Michelle Hammock</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 4</p> <p>1 EXHIBITS continued</p> <p>2 Exhibit Page</p> <p>3 84 Email Bates Stamp Osage Wind-000114 212</p> <p>4 85 Email to Francesco Venturini 221</p> <p>5 Bates Stamp Osage Wind PRIV-000112</p> <p>6 98 Email Bates Stamp Osage Wind 238</p> <p>7 PRIV-000128</p> <p>8 102 Exhibit B(i) Bates Stamp Osage 48</p> <p>9 Wind-003768</p> <p>10 103 Scope of Work Agreement Bates Stamp 62</p> <p>11 Osage Wind-024565</p> <p>12 104 Construction Management Agreement 82</p> <p>13 between EGPNA and Osage Wind</p> <p>14 Bates Stamp EGPNA-000001</p> <p>15 105 Email Bates Stamp Osage Wind-018680 106</p> <p>16 106 Email Bates Stamp Osage Wind-018808 109</p> <p>17 107 Memo Dated May 19, 2014 Bates Stamp 116</p> <p>18 Osage Wind PRIV-000577</p> <p>19 108 Memo Dated August 25, 2014 Bates 124</p> <p>20 Stamp Osage Wind PRIV-000446</p> <p>21 109 Email Dated October 20, 2014 Bates 160</p> <p>22 Stamp Osage Wind-019010</p> <p>23 110 Email Dated November 22, 2014 Bates 169</p> <p>24 Stamp Osage Wind-038347</p> <p>25</p>
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<p>Page 6</p> <p>1 STIPULATIONS</p> <p>2 It is hereby stipulated and agreed by and between</p> <p>3 the parties hereto, through their respective</p> <p>4 attorneys, that the deposition of BILL PRICE may be</p> <p>5 taken pursuant to notice and in accordance with the</p> <p>6 Federal Rules of Civil Procedure on July 21, 2021,</p> <p>7 before Mary K. Beckham, CSR RPR.</p> <p>8</p> <p>9</p> <p>10</p> <p>11</p> <p>12</p> <p>13</p> <p>14</p> <p>15</p> <p>16</p> <p>17</p> <p>18</p> <p>19</p> <p>20</p> <p>21</p> <p>22</p> <p>23</p> <p>24</p> <p>25</p>	<p>Page 8</p> <p>1 BILL PRICE,</p> <p>2 after having been first duly sworn, deposes and</p> <p>3 says in reply to the questions propounded as</p> <p>4 follows, to-wit:</p> <p>5 DIRECT EXAMINATION</p> <p>6 BY MS. NAGLE:</p> <p>7 Q So thank you so much, Mr. Price. Good</p> <p>8 morning -- or good afternoon as it may be --</p> <p>9 A Good afternoon.</p> <p>10 Q -- depending on where you are.</p> <p>11 A I'm in South Africa. Yes, Johannesburg,</p> <p>12 South Africa.</p> <p>13 Q Wonderful. Thank you so much for taking</p> <p>14 the time to join us today. My name is Mary Kathryn.</p> <p>15 I will be asking some questions on behalf of the</p> <p>16 intervenor plaintiff in this case, the Osage</p> <p>17 Minerals Council. Just before we get started, have</p> <p>18 you ever testified in a deposition before?</p> <p>19 A I have.</p> <p>20 Q Okay. So --</p> <p>21 A Yeah.</p> <p>22 Q You probably know how it goes, but, you</p> <p>23 know, I'll be asking some questions. Your attorney,</p> <p>24 Mr. McCormack, will be defending, and he may object.</p> <p>25 I just ask that you answer my question unless he</p>
<p>Page 7</p> <p>1 THE VIDEOGRAPHER: This is the videotaped</p> <p>2 deposition of Bill Price in the matter of United</p> <p>3 States, Osage Minerals Council vs Osage Wind in the</p> <p>4 Northern District of Oklahoma, Case Number</p> <p>5 14-CV-704-GKF-JFJ. We are now on the record at</p> <p>6 5:03 a.m. central time on July 21st, 2021. Will</p> <p>7 counsel please state their appearances for the</p> <p>8 record?</p> <p>9 MS. NAGLE: Yes. This is Mary Kathryn</p> <p>10 Nagle from Pipestem &amp; Nagle Law representing the</p> <p>11 intervenor plaintiff, the Osage Minerals Council,</p> <p>12 and with me here today is my colleague Shoney Blake.</p> <p>13 MS. McCLANAHAN: This is Kathy McClanahan.</p> <p>14 I'm with the United States Attorney's Office here in</p> <p>15 Tulsa, representing the United States. I have with</p> <p>16 me Nolan Fields, Charles Babst, and paralegals,</p> <p>17 Michelle Hammock and Christina Watson.</p> <p>18 MR. McCORMACK: And this is Tom McCormack</p> <p>19 with Norton Rose Fulbright on behalf of the witness,</p> <p>20 Bill Price, and with me today are my colleagues,</p> <p>21 Sarah Stevenson from Modrall Sperling and Bob Kirby,</p> <p>22 also from Norton Rose Fulbright.</p> <p>23 THE VIDEOGRAPHER: Okay. Will the</p> <p>24 reporter now swear in the witness?</p> <p>25 WHEREUPON,</p>	<p>Page 9</p> <p>1 instructs you not to, and if you have any questions,</p> <p>2 you know, feel free to ask me to clarify or, you</p> <p>3 know, I certainly don't want you to have to guess or</p> <p>4 assume anything, so please feel free to ask</p> <p>5 clarifying questions if you need them, and, you</p> <p>6 know, we can take breaks at any time. So I will try</p> <p>7 to watch the clock and take breaks, you know, on a</p> <p>8 somewhat regular basis. But if you ever need a</p> <p>9 break at some time, please feel free to let me know</p> <p>10 or let your counsel know, and he can ask and we can</p> <p>11 certainly take a break. Does that sound good to</p> <p>12 you?</p> <p>13 A Yes, I understand.</p> <p>14 Q Okay. Thanks so much. Now --</p> <p>15 MR. McCORMACK: Ms. Nagle, can I ask a</p> <p>16 quick question? I know this is a little out of the</p> <p>17 ordinary having to do this by Zoom. One of the</p> <p>18 things that I have suggested to my witness is I have</p> <p>19 a phone here. Obviously, I wouldn't do it in the</p> <p>20 middle of a question unless there were a privilege</p> <p>21 involved, but it may be that here and there the</p> <p>22 client and I may wish to speak. I would -- if I do</p> <p>23 that, I would probably call him on the phone, mute</p> <p>24 this out, and just -- I just want to let you know</p> <p>25 that if I do that, maybe won't have to, I just</p>

<p style="text-align: right;">Page 10</p> <p>1 wanted to let you know what our protocol is going to 2 be for that.</p> <p>3 MS. NAGLE: Okay. Thank you. I 4 appreciate that, and I appreciate -- you know, 5 obviously, we can't all be in the same room during a 6 Zoom deposition, so if you do need an opportunity to 7 speak to the witness, you know, certainly one of you 8 two can let me know and we can take a break --</p> <p>9 MR. McCORMACK: Okay.</p> <p>10 MS. NAGLE: -- to facilitate that phone 11 call. Okay. Thank you.</p> <p>12 <b>Q (By Ms. Nagle) So other than -- so it</b> 13 <b>sounds like, Mr. Price, you will have a phone</b> 14 <b>present with you during the deposition; is that</b> 15 <b>correct?</b></p> <p>16 A Yes.</p> <p>17 <b>Q Will you be communicating with anyone else</b> 18 <b>other than -- other than your counsel during this</b> 19 <b>deposition?</b></p> <p>20 A I don't anticipate. I have a clear 21 calendar, so I have a lot of responsibilities, so I 22 can't say that someone else wouldn't call, because I 23 do have it on, to be able to communicate. It is on 24 the vibrate mode so to not cause an interruption to 25 this process.</p>	<p style="text-align: right;">Page 12</p> <p>1 staff. I've spoken to a few people to clear 2 schedule, to let them know that I wasn't available 3 during this period of time, so to generally try not 4 to disturb me while I go through this process, but 5 from a content perspective, no.</p> <p>6 <b>Q Okay. All right. So in terms of your</b> 7 <b>employment with Enel, when did you first become</b> 8 <b>employed with an Enel entity?</b></p> <p>9 A I joined Enel through an acquisition. 10 Enel Green Power North America acquired a company 11 called AMP Resources that I was vice president of 12 operations with, and during that acquisition I was 13 asked to continue working for the company that was 14 acquired by Enel North America, and that's how I 15 joined them, through an acquisition.</p> <p>16 <b>Q And do you recall roughly what time period</b> 17 <b>or year that would have been?</b></p> <p>18 A 2005, 2006.</p> <p>19 <b>Q Okay. And so were you then, after that</b> 20 <b>acquisition, employed by Enel Green Power North</b> 21 <b>America?</b></p> <p>22 A Yes.</p> <p>23 <b>Q And what was your job title after that</b> 24 <b>acquisition?</b></p> <p>25 A I was the vice president of geothermal</p>
<p style="text-align: right;">Page 11</p> <p>1 <b>Q Okay. Great.</b></p> <p>2 A If others were to call me in my ordinary 3 course of business, and I haven't had that -- since 4 I have the phone on, others could call as well.</p> <p>5 <b>Q Sure, sure. Okay. Thank you. What did</b> 6 <b>you do to review or prepare for your deposition</b> 7 <b>today?</b></p> <p>8 A I have recently looked at some documents, 9 I've talked with the company's legal support staff 10 just to get some review and recollection of some of 11 the documents that took place, you know, six, seven 12 years ago. It's been a while, so to try to refresh 13 my memory.</p> <p>14 <b>Q Did you have any meetings with counsel to</b> 15 <b>prepare for the deposition?</b></p> <p>16 A Yeah, I had three meetings, three 17 discussions to just go over material.</p> <p>18 <b>Q And --</b></p> <p>19 A I'm (inaudible) --</p> <p>20 <b>Q And besides counsel, have you spoken to</b> 21 <b>anyone else today about your deposition?</b></p> <p>22 A Today, no.</p> <p>23 <b>Q Prior to today have you spoken to anyone</b> 24 <b>about your deposition besides counsel?</b></p> <p>25 A Not the actual content. I've spoken to my</p>	<p style="text-align: right;">Page 13</p> <p>1 operations, geothermal assets, and I had significant 2 experience in -- broad, general experience in 3 geothermal, so both development, construction and 4 operations.</p> <p>5 <b>Q Okay.</b></p> <p>6 A So the acquisition that Enel did with AMP 7 Resources, there were four distinct geothermal 8 projects, and I was interested in acquiring those 9 projects and further developing them.</p> <p>10 <b>Q And are you still employed with Enel</b> 11 <b>today?</b></p> <p>12 A Yes.</p> <p>13 <b>Q And which Enel entity are you currently</b> 14 <b>employed by?</b></p> <p>15 A The same.</p> <p>16 <b>Q Okay.</b></p> <p>17 A So while I'm in South Africa I'm here as 18 an expat.</p> <p>19 <b>Q Okay. What is your current job title</b> 20 <b>today?</b></p> <p>21 A I'm the country manager of Southern 22 Africa, CO and the managing director.</p> <p>23 <b>Q Okay. And have you, during the course of</b> 24 <b>your time with Enel, been employed by any other Enel</b> 25 <b>entities, or has it been EGPNA the whole time?</b></p>

<p>Page 14</p> <p>1 A So mine is all Enel Green Power North 2 America, so it changed some business entities, but 3 it's the same -- same core company. 4 <b>Q Okay. And has your job title -- have you 5 held any other job titles besides vice president of 6 geothermal ops and country manager?</b> 7 A Yes. 8 <b>Q And what were the other job titles that 9 you've held?</b> 10 A The other job title was we started doing 11 geothermal construction works. I went from just 12 this operational function to construction, so I 13 became the vice president of engineering 14 construction for Enel Green Power North America and 15 started with constructing geothermal projects and 16 then after that extended to constructing solar 17 projects for the vo-tech and then wind projects, 18 hydro projects, and then my area of responsibility 19 expanded beyond North America to Central and South 20 America. So I was responsible for building projects 21 in Chile, Canada, North America -- of course that's 22 North America, but beyond the United States, and a 23 project in Panama, Costa Rica, Guatemala, a bunch of 24 projects in Mexico until about 2016 where I was 25 assigned and asked to come to South Africa to be the</p>	<p>Page 16</p> <p>1 <b>project, who were the folks that reported directly 2 to you?</b> 3 A Primarily project management team, project 4 management includes some logistical staff. At the 5 time we had, again, a matrix organization, so we're 6 not really hierarchal per se, when you say 7 reporting, because we have multiple business lines. 8 So the project management was the -- had the -- I 9 would say for my responsibility, to make it clear, I 10 had the overall execution responsibility for this 11 project, to ensure it was constructed and executed. 12 <b>Q And with that responsibility were you 13 there on the site for the wind farm project during 14 construction?</b> 15 A I mean, not full time. I visited the site 16 from time to times, because I had multiple projects 17 under my responsibilities, so I visited various 18 projects in different countries. 19 <b>Q Who or was there someone who was there on 20 site on a daily basis that reported to you that you 21 relied on for updates about what was happening on 22 the ground at the site?</b> 23 A We had a site manager, a gentleman named 24 Bill Moskaluk, the site manager, and then from time 25 to time we had a project manager named Giuseppe</p>
<p>Page 15</p> <p>1 country manager position that I just referenced. 2 <b>Q And when did you work on the Osage Wind 3 Farm project?</b> 4 A 2014, 2015 for sure, '14, yes, is my 5 recollection. 6 <b>Q And so would your title at that time have 7 been vice president of engineering and construction?</b> 8 A Correct. 9 <b>Q Okay. So during that time period in 2014 10 to 2015 then, who did you report to?</b> 11 A I had a dual report. We have a matrix 12 organization, so I reported to the CO, which it 13 was -- at the time was Francesco Venturini, and I 14 also reported to the head of engineering 15 construction for the -- all of Enel, which is a 16 position in Italy, a gentleman named Vagliasindi -- 17 what was his first name -- so Mr. Vagliasindi, so 18 interesting as it's -- the spelling, Vittorio, 19 Vittorio Vagliasindi with Enel. He has since 20 retired. 21 <b>Q Okay. And was there anyone that reported 22 directly to you?</b> 23 A Yes. The project management staff -- are 24 you referring to the Osage project or other? 25 <b>Q Correct, just for the Osage Wind Farm</b></p>	<p>Page 17</p> <p>1 DiMarzio. 2 <b>Q Okay. And did you have any direct 3 communication with any of the subcontractors working 4 on the construction process?</b> 5 A I'm not too sure or recollect much 6 subcontractors. I mean, I did have some discussion 7 of subcontractors. If I can rephrase your question, 8 did I have -- of course, did I have discussions with 9 contractors or subcontractors? 10 <b>Q Sorry. Did you have conversations or did 11 you communicate directly with subcontractors working 12 on the project?</b> 13 A Not too much subs, here and there doing 14 safety inspections, so not much of the 15 subcontractors, per se. It's normally not something 16 that we would do. Contractors, yeah, of course the 17 main contractors, you know, a lot. 18 <b>Q Were there -- were there contractors that 19 you had communications with?</b> 20 A All of our major equipment suppliers, of 21 course, the main contractor who did the turn key 22 aspect or balance of plant of the project, IEA. 23 Their vice president was a gentleman named Chris 24 Hanson. 25 <b>Q Okay.</b></p>

<p>Page 18</p> <p>1 A I've had a lot of discussions with him.</p> <p>2 <b>Q Okay. Great. Now, were you involved at</b></p> <p>3 <b>all with the change order request process?</b></p> <p>4 A Yes.</p> <p>5 <b>Q And what was your role with the change</b></p> <p>6 <b>order process?</b></p> <p>7 A The change order process is -- if we had</p> <p>8 some work activities that were outside of the scope</p> <p>9 of our contract, that a change order would be</p> <p>10 created on the behalf of project management. So</p> <p>11 project management would put together through the</p> <p>12 contractor and say, okay, there's something that was</p> <p>13 outside of the work specification. We would need</p> <p>14 this additional work that would -- that a request be</p> <p>15 done, and then my role would, one would be to review</p> <p>16 it, understand it, have some discussions with the</p> <p>17 contractor, understand some pricing, and then would</p> <p>18 endorse it and then submit it for approval to --</p> <p>19 to -- I believe through -- I've done a lot of</p> <p>20 different projects with the change order processes</p> <p>21 and procedures, but it would go to a level of</p> <p>22 signature requirement for the company to acknowledge</p> <p>23 the change order. Depending on the cost of the</p> <p>24 change order, it would have an impact on the time.</p> <p>25 Can you hold on just a minute?</p>	<p>Page 20</p> <p>1 <b>responsible for submitting the change order request?</b></p> <p>2 A The initial change order request would be</p> <p>3 submitted by project management, which would be</p> <p>4 Giuseppe DiMarzio.</p> <p>5 <b>Q Okay. And how many -- roughly how many</b></p> <p>6 <b>change order requests were there during the process</b></p> <p>7 <b>of construction for the Osage Wind Farm?</b></p> <p>8 A I don't recall how many. Typically we</p> <p>9 don't want to have too many of these things, but I</p> <p>10 don't remember the exact number.</p> <p>11 <b>Q Okay. And do you recall what sort of</b></p> <p>12 <b>frequency there were with them? I mean, was it</b></p> <p>13 <b>common to have a change order request submitted on</b></p> <p>14 <b>this project, or were they rather infrequent?</b></p> <p>15 A I guess it depends on your interpretation</p> <p>16 of infrequent. From my personal experience with</p> <p>17 building projects, the number of change orders on</p> <p>18 this particular project was -- from the contractor</p> <p>19 IEA there was more than we typically have, but other</p> <p>20 works, not as much, so I would say less than</p> <p>21 standard from my experience with the construction</p> <p>22 renewal plans.</p> <p>23 <b>Q Do you recall how many change order</b></p> <p>24 <b>requests were submitted for this project?</b></p> <p>25 A No.</p>
<p>Page 19</p> <p>1 <b>Q Sure.</b></p> <p>2 (Discussion held off the record)</p> <p>3 A Okay.</p> <p>4 <b>Q (By Ms. Nagle) Okay. So just to be</b></p> <p>5 <b>clear, was that a phone call from your counsel, from</b></p> <p>6 <b>Mr. McCormack?</b></p> <p>7 MR. McCORMACK: It was.</p> <p>8 A Yes.</p> <p>9 <b>Q (By Ms. Nagle) Are we okay to proceed?</b></p> <p>10 <b>Do you want me to --</b></p> <p>11 MR. McCORMACK: Yes.</p> <p>12 MS. NAGLE: Okay.</p> <p>13 MR. McCORMACK: No. That's the functional</p> <p>14 equivalent of reaching over and whispering in my</p> <p>15 witness's ear.</p> <p>16 MS. NAGLE: Gotcha.</p> <p>17 <b>Q (By Ms. Nagle) So in terms of the change</b></p> <p>18 <b>order request process, who would submit a change</b></p> <p>19 <b>order request?</b></p> <p>20 A Who would submit? It would be submitted</p> <p>21 on behalf of project management, so -- so I'm going</p> <p>22 to clear who -- what do you mean who? As an entity,</p> <p>23 as an individual?</p> <p>24 <b>Q Would it have been, for instance, Bill</b></p> <p>25 <b>Moskaluk, or who would have in this process been</b></p>	<p>Page 21</p> <p>1 <b>Q Were you personally in charge of approving</b></p> <p>2 <b>or denying a change order request, or would that</b></p> <p>3 <b>have been someone else above you?</b></p> <p>4 A I would approve a change order request</p> <p>5 that was submitted by Giuseppe DiMarzio, so in some</p> <p>6 cases he would help prepare them, so I would approve</p> <p>7 it at my level, and then for -- again, depending on</p> <p>8 the amount, the cost and the certain topic, then it</p> <p>9 would be escalated for final approval.</p> <p>10 <b>Q Uh-huh.</b></p> <p>11 A Which usually in our procedures, there's a</p> <p>12 signature on the bottom of them, so I would initiate</p> <p>13 the process and go through a formal approval.</p> <p>14 <b>Q What criteria did you use to decide</b></p> <p>15 <b>whether or not to approve a change order request?</b></p> <p>16 A A change order is -- the criteria was if</p> <p>17 it was work scope outside of contract.</p> <p>18 <b>Q Was there any work that was outside the</b></p> <p>19 <b>scope of the contract that should not be approved?</b></p> <p>20 MR. McCORMACK: Object to the form of the</p> <p>21 question. If you understand it, you can answer.</p> <p>22 A Can you rephrase?</p> <p>23 <b>Q (By Ms. Nagle) Sure. So in terms of</b></p> <p>24 <b>deciding whether or not to approve a change order</b></p> <p>25 <b>request that came across your desk, how would you</b></p>

<p style="text-align: right;">Page 22</p> <p>1 <b>evaluate whether or not to approve such a request?</b></p> <p>2 A Whether it was not defined in the</p> <p>3 contract. So again, a change order is just</p> <p>4 something that's outside the scope of work. So you</p> <p>5 have a contract, and if you have work that is not</p> <p>6 scriptive, then it needs a change order. Where I'm</p> <p>7 a little bit struggling on your answer, it's not so</p> <p>8 black and white, because there could be something in</p> <p>9 the contract where it would be not precisely clear.</p> <p>10 So there would be some situations where a contractor</p> <p>11 and an owner would be at dispute of what that</p> <p>12 language is, so parties would come together and come</p> <p>13 to an agreement, and sometimes that would involve a</p> <p>14 change order and sometimes not.</p> <p>15 <b>Q Okay. Did you ever deny a change order</b></p> <p>16 <b>request during your work on the Osage Wind Farm</b></p> <p>17 <b>project?</b></p> <p>18 A Yes.</p> <p>19 <b>Q Do you recall what the basis was for</b></p> <p>20 <b>denying that change order request that you denied?</b></p> <p>21 A We -- I believed it was -- it was included</p> <p>22 in the scope of work of the contract.</p> <p>23 <b>Q So it was not necessary to approve the</b></p> <p>24 <b>change order request because the request already</b></p> <p>25 <b>covered work that was in the scope of the contract;</b></p>	<p style="text-align: right;">Page 24</p> <p>1 Sorry. You mean at any time, Ms. Nagle?</p> <p>2 MS. NAGLE: Sure.</p> <p>3 <b>Q (By Ms. Nagle) Any time before Osage</b></p> <p>4 <b>Wind, yes.</b></p> <p>5 MR. McCORMACK: Okay.</p> <p>6 A Referring to with Enel, another company?</p> <p>7 <b>Q (By Ms. Nagle) Yeah. With Enel, what</b></p> <p>8 <b>projects did you work on prior to Osage Wind?</b></p> <p>9 MR. McCORMACK: I'm just going to ask,</p> <p>10 Sarah, I don't know whether some or part of that</p> <p>11 question implicates some of the issues that are off</p> <p>12 the table now in this case. Not that I care that</p> <p>13 much, but I guess we should at least be mindful of</p> <p>14 that issue.</p> <p>15 MS. STEVENSON: Thanks, Tom. I'll keep</p> <p>16 listening, and I think it's probably a fair</p> <p>17 question.</p> <p>18 MR. McCORMACK: Okay. All right. Thank</p> <p>19 you.</p> <p>20 A From the amounts of projects, I would say</p> <p>21 I think -- I don't know how many, because I did a</p> <p>22 lot. I would say by the time I did Osage I had done</p> <p>23 a few wind projects, I had done a few geothermal</p> <p>24 projects, I did photovoltaic projects. So by the</p> <p>25 time I had done Osage, I actually did -- built a</p>
<p style="text-align: right;">Page 23</p> <p>1 <b>is that correct?</b></p> <p>2 A Yes.</p> <p>3 <b>Q Okay. Did you ever need to elevate a</b></p> <p>4 <b>decision on a change order request for the Osage</b></p> <p>5 <b>Wind Farm project?</b></p> <p>6 A Yeah, as -- I think I've already explained</p> <p>7 that, that our decision-making process on a change</p> <p>8 order goes through multiple oversights, through a</p> <p>9 procedure.</p> <p>10 <b>Q So who above you would you elevate it to</b></p> <p>11 <b>for that oversight?</b></p> <p>12 A It went to our project management team and</p> <p>13 its legal, and to Vittorio Vagliasindi, so multiple</p> <p>14 signature checks, so we had various layers. If we</p> <p>15 had an engineering issue, there was an engineering</p> <p>16 assessment done that says, yeah, we agree that this</p> <p>17 additional work is necessary, so there's multiple</p> <p>18 oversights. Typically, again, in this particular</p> <p>19 project at this phase of the change order procedure,</p> <p>20 there's usually a signature on the bottom that</p> <p>21 defines who is responsible to review that change</p> <p>22 order and to approve it.</p> <p>23 <b>Q Okay. And what other projects did you</b></p> <p>24 <b>work on prior to Osage Wind?</b></p> <p>25 MR. McCORMACK: You mean at any time?</p>	<p style="text-align: right;">Page 25</p> <p>1 project, which was called Chisholm, which was</p> <p>2 actually in Oklahoma as well.</p> <p>3 <b>Q Okay. Was Chisholm a wind farm project?</b></p> <p>4 A Yes.</p> <p>5 <b>Q And was your job title with respect to</b></p> <p>6 <b>those other wind farm projects that you worked on</b></p> <p>7 <b>also vice president of engineering and construction?</b></p> <p>8 A Yes.</p> <p>9 <b>Q So would your job responsibilities for</b></p> <p>10 <b>these other wind farm projects, including Chisholm,</b></p> <p>11 <b>have also included what you referred to as execution</b></p> <p>12 <b>of the project?</b></p> <p>13 A Yes.</p> <p>14 <b>Q Okay. Did any of those projects involve</b></p> <p>15 <b>Indian trust property?</b></p> <p>16 A Not that I'm aware of, no.</p> <p>17 <b>Q Okay. Did you work on any other projects</b></p> <p>18 <b>simultaneously with Osage Wind from 2014 to 2015?</b></p> <p>19 A Yes.</p> <p>20 <b>Q Okay. And what were those other projects?</b></p> <p>21 A Like I said, there were projects -- this</p> <p>22 period of time is South America, Central America, a</p> <p>23 variety of different projects. I'd have to look at</p> <p>24 the time. So at any time I would have had about</p> <p>25 five to ten projects, something of this nature, in</p>

<p>Page 26</p> <p>1 execution that I would be responsible for.</p> <p>2 <b>Q Okay. And were you involved at all in</b></p> <p>3 <b>structuring financing or ownership transactions</b></p> <p>4 <b>related to the Osage Wind Farm project?</b></p> <p>5 A My involvements with -- there was a</p> <p>6 transition period -- was more the technical</p> <p>7 evaluation of the projects, so when there was a</p> <p>8 desire by Enel to acquire the project, I was</p> <p>9 involved in certain technical assessments of it.</p> <p>10 <b>Q Okay. And so would that have been when</b></p> <p>11 <b>Enel Kansas acquired the project from -- would that</b></p> <p>12 <b>have been when Enel Kansas acquired the project?</b></p> <p>13 A Yes, that was part of that process, so</p> <p>14 part of the fork, so I would say part of the due</p> <p>15 diligence --</p> <p>16 <b>Q Uh-huh.</b></p> <p>17 A -- of the acquisition.</p> <p>18 <b>Q In terms of undertaking due diligence,</b></p> <p>19 <b>what were your responsibilities with regards to that</b></p> <p>20 <b>transaction?</b></p> <p>21 A Reviewing the current state of the</p> <p>22 project, the project had some existing agreements</p> <p>23 relating to fact, had some -- for example, the IEA</p> <p>24 agreement was an existing contract, turbine supply</p> <p>25 agreements, power purchase agreements,</p>	<p>Page 28</p> <p>1 A So that was my -- so that's the -- as I</p> <p>2 said, the project has one main customer, which was</p> <p>3 the -- this particular offtake.</p> <p>4 <b>Q And with regards to the power purchase</b></p> <p>5 <b>agreement with Associated Electric, did you all end</b></p> <p>6 <b>up meeting the contractual dates?</b></p> <p>7 A Yes.</p> <p>8 <b>Q Do you recall what that date was?</b></p> <p>9 A It was later 2015 -- or, excuse me, yeah,</p> <p>10 '15, it was later 2015. The project, yeah, met its</p> <p>11 requirements.</p> <p>12 <b>Q Okay. Did you ever communicate with</b></p> <p>13 <b>anyone from General Electric regarding the Osage</b></p> <p>14 <b>Wind Farm project?</b></p> <p>15 A General Electric. Well, there's two --</p> <p>16 two business entities with this project with General</p> <p>17 Electric. One was the Turbine Supply Agreement,</p> <p>18 called TSA, where they supplied the actual wind</p> <p>19 turbines, the components of the wind turbines. Then</p> <p>20 we -- GE was also the production tax credit -- I</p> <p>21 believe the partner for the project, so they had an</p> <p>22 investment aspect, so we had -- through GE there was</p> <p>23 a former -- a technical advisor and GE's technical</p> <p>24 team to -- we would -- they would be part of our</p> <p>25 project review meetings, they would be part of</p>
<p>Page 27</p> <p>1 interconnection agreements, just the -- those type</p> <p>2 of aspects that would have an impact on the</p> <p>3 execution of the project, and so I would get -- I</p> <p>4 gave my comments or inputs on whether we can</p> <p>5 complete the project or execute the project in the</p> <p>6 time needed to meet the obligations of the contract.</p> <p>7 <b>Q What were the time obligations under the</b></p> <p>8 <b>contract that you all were required to meet with the</b></p> <p>9 <b>Osage Wind Farm project?</b></p> <p>10 A The project in general has one main</p> <p>11 customer and one main -- which is an offtake</p> <p>12 agreement, which was through a power purchase</p> <p>13 agreement. I don't remember the name of the entity.</p> <p>14 It was a utility, but Associated Electric or</p> <p>15 something of this nature. So we had a power</p> <p>16 purchase agreement, and it had certain requirements</p> <p>17 for us to produce and be online for, and then</p> <p>18 other -- other aspects, we had interconnection</p> <p>19 agreements to interconnect the facility into the</p> <p>20 transmission grid and testing requirements to</p> <p>21 demonstrate the project met its requirements to</p> <p>22 declare commercial, so all those requirements, so</p> <p>23 that when we put the project online we had enough</p> <p>24 time to meet the contractual --</p> <p>25 <b>Q Uh-huh.</b></p>	<p>Page 29</p> <p>1 our -- the technical team to make sure the project</p> <p>2 was built how we were supposed to build it, as you</p> <p>3 would expect for a partner to -- for them to assess</p> <p>4 that the project was being built the way it was</p> <p>5 supposed to be built.</p> <p>6 <b>Q Uh-huh. And in terms of GE's assessment,</b></p> <p>7 <b>were they assessing this during the phase of</b></p> <p>8 <b>construction, or would they have assessed that after</b></p> <p>9 <b>the completion of the construction?</b></p> <p>10 A Both, during and upon completion.</p> <p>11 <b>Q And who at Enel would have been primarily</b></p> <p>12 <b>responsible for communication with GE?</b></p> <p>13 A Well, again, it depends on what part --</p> <p>14 are you talking about GE finance or GE turbine</p> <p>15 supply agreement?</p> <p>16 <b>Q I see. How about GE finance?</b></p> <p>17 A GE finance would -- the technical team</p> <p>18 would be -- would be me, but it also could have been</p> <p>19 the project manager. They could request certain</p> <p>20 documents, and we would provide them. They could</p> <p>21 ask technical requirements to our engineering team</p> <p>22 if they wanted to see some aspects, we would</p> <p>23 submit -- they could provide documents. So my</p> <p>24 interface with GE finance group was primarily the</p> <p>25 technical team.</p>

<p>Page 30</p> <p>1 <b>Q Okay. Do you recall any names of any</b>  2 <b>individuals at GE that you communicated with</b>  3 <b>directly about the Osage Wind Farm project?</b>  4 A Not off the top of my head.  5 <b>Q Okay. Now, prior to Enel's acquisition of</b>  6 <b>the wind farm project, did you have any involvement</b>  7 <b>in Tradewind's purchase of the wind farm project</b>  8 <b>from Wind Capital Group in 2013?</b>  9 A Not much.  10 <b>Q Okay.</b>  11 A But I think I -- when I say that is, I  12 knew about it, I knew there was a desire to acquire  13 it, I knew -- from our standard company meetings, I  14 knew it was on our pipeline. I knew it was  15 something that the company was interested in doing.  16 Once a project -- these type of activities are ran  17 through the business development team, and then once  18 they hit a certain maturity with the business  19 development team, then I get involved, because the  20 business development team does a lot projects, and  21 there's certain points where they would need my  22 input as we get closer to the project meeting a  23 certain maturity level.  24 <b>Q Do you know if it was the plan at that</b>  25 <b>time in 2013 for Enel to eventually acquire the</b></p>	<p>Page 31</p> <p>1 <b>Q Do you recall who was Enel's legal</b>  2 <b>representation in the transaction?</b>  3 A Well, I think Enel had both internal and  4 external counsel that supported the transaction, but  5 did I have direct -- are you talking 2013 or what  6 period?  7 <b>Q That is correct.</b>  8 A 2013?  9 <b>Q Yeah, 2013.</b>  10 A I wasn't involved in that at all.  11 <b>Q Okay. Are you familiar with the detailed</b>  12 <b>legal analysis that defendants' attorneys undertook</b>  13 <b>in this case to determine whether or not the Osage</b>  14 <b>Wind Farm project would require a mining permit from</b>  15 <b>the Osage Nation?</b>  16 A Are you referring to the 2013 opinion or  17 the one in '14?  18 <b>Q Either one. But, yes, are you familiar</b>  19 <b>with either one of those legal opinions?</b>  20 A I'm somewhat familiar, and I read them at  21 the time. The 2013 document I read when we were in  22 construction mode, so I wasn't aware of its -- at  23 the time of starting construction, and then I became  24 aware of it, and then, of course, the 2014 opinion,  25 I was there at the project, so much more aware of</p>
<p>Page 31</p> <p>1 <b>project?</b>  2 A Say again?  3 <b>Q So do you know whether it was the plan at</b>  4 <b>that time in 2013 when Tradewind purchased Osage</b>  5 <b>Wind from Wind Capital Group, was it the plan then</b>  6 <b>for Enel to eventually acquire the project?</b>  7 A Again, I wasn't -- I wasn't part of the  8 decision-making process for that. I was part of  9 meetings, staff meetings, so I was aware of the  10 aspects of it, but it would not be normally  11 customary in my responsibilities to be part of  12 that -- that activity. So, yeah, I was aware that  13 Tradewinds was interested in -- which was our  14 development partner, to acquire this project, and  15 then, of course, we would then -- we would acquire  16 the project from Tradewinds, we provided some  17 monetary support from Tradewinds, and the details of  18 the transactions, how much we paid, all that stuff,  19 it was not -- I wasn't part of that.  20 <b>Q Okay. Do you recall who from Tradewind</b>  21 <b>was involved in the transaction?</b>  22 A No.  23 <b>Q Okay. Do you recall who from Wind Capital</b>  24 <b>Group was involved in the transaction?</b>  25 A No.</p>	<p>Page 32</p> <p>1 it.  2 <b>Q When did you first read the 2013 opinion?</b>  3 A September, October, I believe, of 2014.  4 <b>Q Okay. And who decided this analysis was</b>  5 <b>necessary from Enel or any of the Enel affiliated</b>  6 <b>entities?</b>  7 A Which one?  8 <b>Q Well, I guess let me ask it this way. Who</b>  9 <b>requested Modrall Sperling to undertake this</b>  10 <b>analysis?</b>  11 A Which analysis, 2013 or 2014?  12 <b>Q How about the 2013 legal opinion?</b>  13 A I have no idea. I wasn't part of the  14 project --  15 <b>Q Okay.</b>  16 A -- at that time.  17 <b>Q For 2014, do you have any knowledge of who</b>  18 <b>asked Modrall Sperling to undertake that legal</b>  19 <b>analysis?</b>  20 A I suspect it would be part of our legal  21 team, because we were assessing it. I also think  22 that Tradewinds, they did a permitting assessment.  23 We asked Tradewinds, you know, what's up with this  24 permit requirement, can you give some insight over  25 it, and then so Tradewinds would be involved and our</p>

<p>Page 34</p> <p>1 legal and executive staff team.</p> <p>2 <b>Q Okay.</b></p> <p>3 A And this is speculation.</p> <p>4 MR. McCORMACK: And I would jump in on</p> <p>5 that and say, if you know the answer, answer it. If</p> <p>6 you don't know the answer, don't speculate.</p> <p>7 <b>Q (By Ms. Nagle) So just to be clear, do</b></p> <p>8 <b>you know when the decision was made in 2013 to ask</b></p> <p>9 <b>Modrall Sperling to undertake their legal analysis?</b></p> <p>10 A I don't know anything about the 2013 --</p> <p>11 the decision process, who -- I read the document</p> <p>12 after the fact in 2014.</p> <p>13 <b>Q Okay. Then 2014, do you know when Modrall</b></p> <p>14 <b>Sperling was asked to undertake craft -- drafting</b></p> <p>15 <b>that legal analysis?</b></p> <p>16 A I don't have any direct knowledge of the</p> <p>17 time, but I did read the analysis after it was</p> <p>18 drafted.</p> <p>19 <b>Q Do you know at that time in 2014 who at</b></p> <p>20 <b>Enel was responsible for providing Modrall Sperling</b></p> <p>21 <b>with the facts that they relied on in writing this</b></p> <p>22 <b>legal analysis?</b></p> <p>23 A I don't understand what you mean, facts.</p> <p>24 Could you explain what exactly, what facts you are</p> <p>25 referring to?</p>	<p>Page 36</p> <p>1 <b>Q Okay. Would anyone else have provided</b></p> <p>2 <b>facts related to what was occurring on site in</b></p> <p>3 <b>addition to you, or would it have just been you?</b></p> <p>4 A It could have been -- these teams, we have</p> <p>5 various meetings, we had numerous meetings. So if</p> <p>6 it was a high level meeting, it would have just been</p> <p>7 me. If we had various support group meetings, it</p> <p>8 could have been, of course, Bill Moskaluk, our</p> <p>9 engineering team, our environmental team, Giuseppe</p> <p>10 DiMarzio, the project manager.</p> <p>11 <b>Q Okay. In terms of the 2014 memo, when did</b></p> <p>12 <b>the Modrall Sperling attorneys conclude their --</b></p> <p>13 <b>finish their analysis for purposes of drafting the</b></p> <p>14 <b>2014 memo?</b></p> <p>15 A October or November of 2013.</p> <p>16 <b>Q Okay. So for purposes of --</b></p> <p>17 A I don't know when they draft -- that's</p> <p>18 when I read it, so...</p> <p>19 <b>Q Okay. Do you know whether they updated</b></p> <p>20 <b>their analysis between 2013 and 2014?</b></p> <p>21 A They updated -- I read both. The</p> <p>22 conclusions were the same. So I don't know what you</p> <p>23 mean by update.</p> <p>24 <b>Q Well, I'm just asking whether you know of</b></p> <p>25 <b>any updates that were made based on changes on site,</b></p>
<p>Page 35</p> <p>1 <b>Q So in terms of the method of construction,</b></p> <p>2 <b>what was being mined, what was being taken, the</b></p> <p>3 <b>methodology of taking the minerals from the ground,</b></p> <p>4 <b>how they were being used, any of that information</b></p> <p>5 <b>relevant to the actual construction of the wind farm</b></p> <p>6 <b>project, do you know, was there someone at Enel who</b></p> <p>7 <b>was responsible for providing those facts to the</b></p> <p>8 <b>attorneys at Modrall who were performing this legal</b></p> <p>9 <b>analysis?</b></p> <p>10 MR. McCORMACK: Hold on one second. I'm</p> <p>11 going to object to the form of the question for a</p> <p>12 variety of reasons, including inserting facts not</p> <p>13 established and also compound, but if you understand</p> <p>14 the question, you can answer it.</p> <p>15 A Well, I recall us -- us as in Enel, the</p> <p>16 execution team, as well as myself, explaining to the</p> <p>17 group what -- the process that we were doing at the</p> <p>18 site, so this included a team that included legal</p> <p>19 counsel, it included permits. So when we -- when we</p> <p>20 were trying to understand what the situation was, we</p> <p>21 got together as a group, so I provided the technical</p> <p>22 explanation of what was occurring on site.</p> <p>23 <b>Q Uh-huh.</b></p> <p>24 A So if those are the facts you are</p> <p>25 referring to, yes.</p>	<p>Page 37</p> <p>1 <b>changes in the construction plan. Do you know of</b></p> <p>2 <b>any updates being made to the memo to account for</b></p> <p>3 <b>changes from 2013 to 2014?</b></p> <p>4 A I don't recall.</p> <p>5 <b>Q Okay. So I am now going to introduce an</b></p> <p>6 <b>exhibit, which has actually previously been</b></p> <p>7 <b>introduced. I'm going to share my screen.</b></p> <p>8 <b>Hopefully it will be visible. So this has</b></p> <p>9 <b>previously been entered as Exhibit 78 in this</b></p> <p>10 <b>litigation. It is Bates stamped Osage Wind-021248,</b></p> <p>11 <b>and I'll represent that it is the Membership</b></p> <p>12 <b>Interest Purchase Agreement between TradeWind Energy</b></p> <p>13 <b>and Wind Capital Group. Mr. Price, are you familiar</b></p> <p>14 <b>with this document?</b></p> <p>15 (Exhibit 78 previously marked for</p> <p>16 identification.)</p> <p>17 A I might have read it, but since I wasn't</p> <p>18 part of the purchase, it wouldn't be something that</p> <p>19 I spent a lot of time with.</p> <p>20 <b>Q (By Ms. Nagle) Okay. I note here that it</b></p> <p>21 <b>states that -- on this page that Wind Capital Group</b></p> <p>22 <b>is the seller and TradeWind Energy is the purchaser.</b></p> <p>23 <b>What is your understanding of the purpose of this</b></p> <p>24 <b>agreement?</b></p> <p>25 A Well, it seems pretty clear. So it says,</p>

<p>Page 38</p> <p>1 you know, TradeWinds was buying the project from the</p> <p>2 Wind Capital Group.</p> <p>3 <b>Q Okay. And if we look at the page ending</b></p> <p>4 <b>in Bates stamp 50 here, I see that EGP is defined as</b></p> <p>5 <b>Enel Green Power North America, Inc. Was that your</b></p> <p>6 <b>employer at the time of this agreement in 2013?</b></p> <p>7 A I believe so, yes.</p> <p>8 <b>Q Okay. If we look at the page ending in</b></p> <p>9 <b>Bates stamp 58, let's get there, here, if you look</b></p> <p>10 <b>on Section 2.4h, it states, "The board of directors</b></p> <p>11 <b>of purchaser and EGP shall have approved this</b></p> <p>12 <b>transaction in all respects." Do you know who was</b></p> <p>13 <b>on the board of directors at EPGNA at the time of</b></p> <p>14 <b>this agreement?</b></p> <p>15 A No.</p> <p>16 <b>Q Do you have any knowledge of whether or</b></p> <p>17 <b>not the board of directors at EGPNA reviewed the</b></p> <p>18 <b>transaction and approved it?</b></p> <p>19 A No.</p> <p>20 <b>Q Okay. Do you know who was on the board of</b></p> <p>21 <b>directors at TradeWind Energy at this time?</b></p> <p>22 A No.</p> <p>23 <b>Q I'm sorry. I didn't hear that. Did</b></p> <p>24 <b>you --</b></p> <p>25 A No. It was not normally my</p>	<p>Page 40</p> <p>1 <b>understanding for why Native American tribes were</b></p> <p>2 <b>excluded from the definition of governmental</b></p> <p>3 <b>authority in this agreement?</b></p> <p>4 A I don't know. I wasn't a party to this.</p> <p>5 I wasn't -- I didn't draft it. I didn't, you know,</p> <p>6 review this particular aspect. I didn't opine on</p> <p>7 this. So as I said, when I read the document, it</p> <p>8 was more -- it was after the fact, so this was a</p> <p>9 decision that was done well before my involvement</p> <p>10 with it.</p> <p>11 <b>Q Okay. Let's look at -- do you know</b></p> <p>12 <b>whether it would be typical in an agreement of this</b></p> <p>13 <b>nature to exclude Native American tribes from the</b></p> <p>14 <b>definition of governmental authority?</b></p> <p>15 A I have no opinion on that. This is the</p> <p>16 first project that I recall that I'd done, I'd built</p> <p>17 that was part of a Native American tribe, and so I</p> <p>18 would not have any idea whether it would be normal</p> <p>19 or not.</p> <p>20 <b>Q Okay. Fair enough. Moving on to page</b></p> <p>21 <b>Bates stamp 21293, so here we have the Guaranty</b></p> <p>22 <b>Agreement, and it looks like Enel Green Power North</b></p> <p>23 <b>America is the guarantor. Do you see that?</b></p> <p>24 A Yes.</p> <p>25 <b>Q What was EGPNA's interest in serving as</b></p>
<p>Page 39</p> <p>1 responsibility. I wasn't personally on the board of</p> <p>2 either company.</p> <p>3 <b>Q Okay. Do you know who was responsible for</b></p> <p>4 <b>drafting this agreement?</b></p> <p>5 A No.</p> <p>6 <b>Q Okay. Would Enel have been involved at</b></p> <p>7 <b>all in the drafting of this agreement?</b></p> <p>8 A It's speculation on my part, so, no, I</p> <p>9 wouldn't. Obviously, if Enel had some -- would</p> <p>10 have had an interest in the project they would</p> <p>11 have -- I would suspect they would have an interest</p> <p>12 in this agreement, but I have no direct knowledge of</p> <p>13 such.</p> <p>14 <b>Q Okay. If we look at the page ending in</b></p> <p>15 <b>Bates stamp 21251, just scroll up here really quick,</b></p> <p>16 <b>we're in the definition section, I see here in</b></p> <p>17 <b>governmental authority, it is defined as meaning,</b></p> <p>18 <b>"any United States, federal, state, local or other</b></p> <p>19 <b>governmental authority," and then it goes on to say,</b></p> <p>20 <b>"provided, however, that for the avoidance of doubt,</b></p> <p>21 <b>no Native American Tribe, nation, entity, body,</b></p> <p>22 <b>organization, governmental or other authority or any</b></p> <p>23 <b>agency, division, ministry, instrumentality or</b></p> <p>24 <b>authority thereof shall be considered a governmental</b></p> <p>25 <b>authority for any purpose hereunder." What is your</b></p>	<p>Page 41</p> <p>1 <b>the guarantor here?</b></p> <p>2 MR. McCORMACK: Object to the form of the</p> <p>3 question, assumes facts, but if you know the answer,</p> <p>4 you can answer.</p> <p>5 A I don't. You are asking me about an</p> <p>6 agreement that I've continued to represent I don't</p> <p>7 have a lot of knowledge about. So it's not an</p> <p>8 engineering and construction agreement. It's an</p> <p>9 execution agreement to purchase the project, and</p> <p>10 it's not something that I had any involvement with.</p> <p>11 <b>Q So you don't have any understanding as to</b></p> <p>12 <b>why EGPNA would want to serve as the guarantor in</b></p> <p>13 <b>terms of this acquisition?</b></p> <p>14 A I have some speculation, but since I</p> <p>15 wasn't part of the agreement, it's really -- nor did</p> <p>16 I have any decision-making process on it.</p> <p>17 <b>Q Okay. In terms of Enel Kansas's purchase</b></p> <p>18 <b>of the Osage Wind Farm project from TradeWind in</b></p> <p>19 <b>2014, do you recall who from TradeWind was involved</b></p> <p>20 <b>in that acquisition?</b></p> <p>21 A No. I spoke to a lot of people at</p> <p>22 TradeWinds. I don't remember the names. If I</p> <p>23 looked at a list of names, I would probably recall.</p> <p>24 It was a long time ago, but I had a lot of</p> <p>25 discussions with the Tradewinds team, and I did work</p>

<p>Page 42</p> <p>1 with Tradewind's group on a variety of activities.</p> <p>2 We did a lot of projects with Tradewind as a</p> <p>3 developer partner.</p> <p>4 <b>Q Would it have been Rob Freeman?</b></p> <p>5 A The name sounds familiar.</p> <p>6 <b>Q Okay. But you don't know for sure?</b></p> <p>7 A No.</p> <p>8 <b>Q Who from Enel Kansas was involved in that</b></p> <p>9 <b>transaction between Enel Kansas and TradeWind in</b></p> <p>10 <b>2014?</b></p> <p>11 A Enel Kansas was the entity that, you know,</p> <p>12 acquired the project, so it would have been Enel</p> <p>13 staff, it would have been our legal staff, a lot of</p> <p>14 business development staff, executive staff, finance</p> <p>15 staff, pretty much a lot of the team within the</p> <p>16 company.</p> <p>17 <b>Q Do you know who Enel Kansas's legal</b></p> <p>18 <b>representation was in this transaction?</b></p> <p>19 A No.</p> <p>20 <b>Q Okay. Did your responsibilities with</b></p> <p>21 <b>respect to Osage Wind, the wind farm project, change</b></p> <p>22 <b>at all as a result of this transaction in 2014?</b></p> <p>23 A No.</p> <p>24 <b>Q Okay. So I am now going to show what has</b></p> <p>25 <b>previously been entered as Exhibit 79 in this</b></p>	<p>Page 43</p> <p>1 <b>is the seller; is that correct?</b></p> <p>2 A Yes.</p> <p>3 <b>Q Okay. And if we look at the page ending</b></p> <p>4 <b>in Bates stamp 21127, we're in the definitions -- in</b></p> <p>5 <b>Article 2 definitions. Governmental authority here</b></p> <p>6 <b>states that it means "any national, tribal, state or</b></p> <p>7 <b>local government." So I note that it looks like</b></p> <p>8 <b>this definition of governmental authority includes</b></p> <p>9 <b>tribal, whereas the last one we looked at excluded</b></p> <p>10 <b>tribal government. Do you have an understanding of</b></p> <p>11 <b>why the decision was made to include tribal</b></p> <p>12 <b>documents within the definition of governmental</b></p> <p>13 <b>authority in this 2014 agreement?</b></p> <p>14 MR. McCORMACK: Hold on one second.</p> <p>15 Object to the form of the question, assumes facts</p> <p>16 not in evidence. But you may answer the question if</p> <p>17 you understand.</p> <p>18 A I don't, no.</p> <p>19 <b>Q (By Ms. Nagle) Do you know which entity,</b></p> <p>20 <b>whether it was Enel Kansas or TradeWind Energy that</b></p> <p>21 <b>would have requested to include tribal in this</b></p> <p>22 <b>definition of governmental authority?</b></p> <p>23 A No.</p> <p>24 <b>Q Do you know who at Enel would know the</b></p> <p>25 <b>answer to that question?</b></p>
<p>Page 43</p> <p>1 <b>litigation, and that is Bates stamped Osage</b></p> <p>2 <b>Wind-021119. Let me see if I can enlarge it just a</b></p> <p>3 <b>little bit here. There we go. That's maybe a</b></p> <p>4 <b>little bit easier to see.</b></p> <p>5 <b>This is a Membership Interest Purchase</b></p> <p>6 <b>Agreement between Enel Kansas and TradeWind Energy,</b></p> <p>7 <b>dated September 17th, 2014. Have you seen this</b></p> <p>8 <b>agreement before, Mr. Price?</b></p> <p>9 (Exhibit 79 previously marked for</p> <p>10 identification.)</p> <p>11 A I believe I have. Again, not -- I knew we</p> <p>12 purchased it, I knew there was an agreement here,</p> <p>13 but I have not spent a lot of time on it, so...</p> <p>14 <b>Q (By Ms. Nagle) Do you --</b></p> <p>15 A I'm aware of it, but -- I've read it a</p> <p>16 time or two, and since it's not something that has</p> <p>17 much to do with the execution of the project, it</p> <p>18 wouldn't have been something that I spent a lot of</p> <p>19 time on.</p> <p>20 <b>Q Do you know the purpose of this agreement?</b></p> <p>21 A Sure. It's to purchase the project from</p> <p>22 TradeWinds.</p> <p>23 <b>Q Okay. Great. If we look at page ending</b></p> <p>24 <b>in Bates stamp 23, it looks like it states here that</b></p> <p>25 <b>Enel Kansas, LLC, is the buyer and TradeWind Energy</b></p>	<p>Page 44</p> <p>1 A Again, I could speculate, but I don't have</p> <p>2 direct knowledge of who would have. I'm sure I</p> <p>3 had -- we have a leadership team who had an impact,</p> <p>4 but I have no -- no direct knowledge to be able to</p> <p>5 address your question.</p> <p>6 <b>Q Do you know who for Enel Kansas worked on</b></p> <p>7 <b>drafting this agreement?</b></p> <p>8 A I, again, being part of our staff meetings</p> <p>9 and being familiar with the agreement being</p> <p>10 discussed, our business development team, our legal</p> <p>11 team, obviously our CEO, those are the teams that I</p> <p>12 recall in our staff meetings that referenced the</p> <p>13 agreements and the progress of such.</p> <p>14 <b>Q Okay. And so by reference to your CEO,</b></p> <p>15 <b>are you referring to Francesco Venturini?</b></p> <p>16 A Yes.</p> <p>17 <b>Q Okay. When you reference the legal team,</b></p> <p>18 <b>would that be Mike Tierney or someone else at Enel?</b></p> <p>19 A Who was head at the time was Steve</p> <p>20 Champagne, so it's that legal team and support.</p> <p>21 Mike Tierney was a legal support under the team of</p> <p>22 Steve Champagne. The business development team,</p> <p>23 which was David Post, head of commercial office, and</p> <p>24 a person that did a lot of work with TradeWinds</p> <p>25 which was Mike Storch, were the individuals</p>

<p>Page 46</p> <p>1 primarily were the individuals responsible for the</p> <p>2 execution of this particular document.</p> <p>3 <b>Q Okay. And do you have an understanding</b></p> <p>4 <b>whether under this definition of governmental</b></p> <p>5 <b>authority here, would this definition have included</b></p> <p>6 <b>the Osage Minerals Council as a governmental</b></p> <p>7 <b>authority?</b></p> <p>8 MR. McCORMACK: If you know.</p> <p>9 A I don't understand your question.</p> <p>10 <b>Q (By Ms. Nagle) Okay. Do you understand</b></p> <p>11 <b>whether for purposes of this agreement here, that</b></p> <p>12 <b>we're looking at in Exhibit 79, whether under this</b></p> <p>13 <b>definition the Osage Minerals Council would have</b></p> <p>14 <b>been a governmental authority?</b></p> <p>15 MR. McCORMACK: Same objection, lack of</p> <p>16 foundation, assumes facts. But if you know the</p> <p>17 answer, you can give it.</p> <p>18 A I see the definition here, but, you know,</p> <p>19 I don't know exactly Bureau of Indian Affairs, if</p> <p>20 it's included in this, if it's considered a</p> <p>21 government authority.</p> <p>22 <b>Q (By Ms. Nagle) Okay.</b></p> <p>23 A I'm unsure. I'm not sure.</p> <p>24 <b>Q Fair enough. Do you know whether or not</b></p> <p>25 <b>Steve Champagne, who worked on this agreement, or</b></p>	<p>Page 48</p> <p>1 I would -- so knowing that, it would be the</p> <p>2 controlling entity.</p> <p>3 <b>Q (By Ms. Nagle) Okay. Fair enough. Let</b></p> <p>4 <b>me just open up my next exhibit. So, let's see</b></p> <p>5 <b>here, I'm now going to introduce a new exhibit, and</b></p> <p>6 <b>I believe that we are at Exhibit 102, but someone</b></p> <p>7 <b>please correct me if I'm wrong about that, but</b></p> <p>8 <b>unless someone corrects me, this will be Exhibit 102</b></p> <p>9 <b>in this litigation, and it is Bates stamped Osage</b></p> <p>10 <b>Wind-003768, and I will note for the record that it</b></p> <p>11 <b>looks to be Exhibit B(i), "To balance of plant</b></p> <p>12 <b>engineering, procurement and construction contract</b></p> <p>13 <b>by and between Osage Wind, LLC, and RMT, Inc, scope</b></p> <p>14 <b>of work." Mr. Price, are you familiar with this</b></p> <p>15 <b>agreement?</b></p> <p>16 (Exhibit 102 marked for identification.)</p> <p>17 A Yes.</p> <p>18 <b>Q (By Ms. Nagle) What is this agreement or</b></p> <p>19 <b>document?</b></p> <p>20 A What is the date of it?</p> <p>21 <b>Q Well, I will actually state that based on</b></p> <p>22 <b>where this falls in defendants' production, we think</b></p> <p>23 <b>it's March 25th, 2013, but that date does not appear</b></p> <p>24 <b>anywhere that we've been able to see on this actual</b></p> <p>25 <b>document. We're just looking at the Bates stamp in</b></p>
<p>Page 47</p> <p>1 <b>any of the other drafters who worked on this</b></p> <p>2 <b>agreement relied on Modrall Sperling's legal opinion</b></p> <p>3 <b>that you mentioned before in drafting this</b></p> <p>4 <b>definition of governmental authority?</b></p> <p>5 A No, I'm not aware.</p> <p>6 <b>Q Okay. If we look at the page ending in</b></p> <p>7 <b>Bates stamp 21126, it defines affiliate here on this</b></p> <p>8 <b>page, means, "with respect to any Person, any other</b></p> <p>9 <b>Person controlling, controlled or under common</b></p> <p>10 <b>control of such first Person. For purposes of this</b></p> <p>11 <b>definition, the term control means, (1), the</b></p> <p>12 <b>ownership of 50 percent or more of the equity</b></p> <p>13 <b>interest in a Person, or (2) the power whether by</b></p> <p>14 <b>contract, equity ownership or otherwise, to direct</b></p> <p>15 <b>or cause the direction of the policies or management</b></p> <p>16 <b>of a Person." Do you know whether for purposes of</b></p> <p>17 <b>this definition whether EGPNA would have been an</b></p> <p>18 <b>affiliate of Enel Kansas under this definition?</b></p> <p>19 MR. McCORMACK: Excuse me, I'm going to</p> <p>20 object to the form of the question, lacking</p> <p>21 foundation and -- but, nonetheless, if you have an</p> <p>22 answer to that, go ahead.</p> <p>23 A Look, for me, my understanding -- my</p> <p>24 understanding is Enel Green Power had greater than</p> <p>25 50 percent ownership in the Enel Kansas project, so</p>	<p>Page 49</p> <p>1 <b>relation to other documents in the chronology. So</b></p> <p>2 <b>my guess to you is that it would have been</b></p> <p>3 <b>March 25th, 2013.</b></p> <p>4 A So it would make sense. So my</p> <p>5 recollection is there was an existing construction</p> <p>6 contract that exists with the project, and the</p> <p>7 construction company was RMT. RMT was acquired in</p> <p>8 some manner by IEA, and so this construction</p> <p>9 contract is not something we viewed as an asset of</p> <p>10 the project, primarily because it had an existing</p> <p>11 agreement to execute the construction of the</p> <p>12 project.</p> <p>13 So, yeah, I was familiar with it. It was</p> <p>14 also interesting from my side is the Wind Capital</p> <p>15 Group was, I would say, a competitor of sorts, so</p> <p>16 they also built projects, so we -- we were able to</p> <p>17 get -- this was an existing turn key contract that</p> <p>18 was used within the industry, so that's my</p> <p>19 recollection of this particular contract.</p> <p>20 <b>Q Okay. And let's see, if we look at page</b></p> <p>21 <b>10, which is ending in Bates stamp 3778, let me see</b></p> <p>22 <b>here for a second, okay. This page here. I will</b></p> <p>23 <b>note that paragraph E, note under here General Civil</b></p> <p>24 <b>Infrastructure Services - Clarifications and</b></p> <p>25 <b>Exclusions, paragraph E here states, "Contractor</b></p>

<p>Page 50</p> <p>1 will not be restricted regarding movement or 2 transport of soil materials, nor will contractor be 3 responsible for fees or delays associated with 4 mineral rights issues." Mineral rights does not, by 5 what I've reviewed of this document, appear to be 6 defined within the document. Do you have an 7 understanding of what is meant by mineral rights 8 issues?</p> <p>9 A Well, if it's not defined, then it's 10 speculation. Since it's capitalized, it should have 11 been defined. So this agreement -- mineral rights, 12 we have rights to minerals.</p> <p>13 Q So for the purposes of the Osage Wind Farm 14 project, would that be in reference to the minerals 15 of the Osage Mineral Estate?</p> <p>16 A Sure. I think that, you know, mineral 17 rights would be -- it could be a lot of entities.</p> <p>18 THE REPORTER: I'm sorry. Could you 19 repeat your answer?</p> <p>20 A It could be a lot of entities, mineral 21 rights, the way I associate it. So if you had a 22 quarry of such and you became an entity where you 23 are getting minerals for certain aspects and there 24 was -- you know, it's who your purchase team -- 25 minerals or rock or material from, who owned that</p>	<p>Page 52</p> <p>1 Q So if I'm correct, did you just say there 2 was a limitation imposed in terms of the movement of 3 rock on the Osage Wind Farm project?</p> <p>4 A I believe so, yes.</p> <p>5 Q And would that be in contradiction to the 6 statement here where it states that "Contractor will 7 not be restricted regarding movement or transport of 8 soil materials"?</p> <p>9 MR. McCORMACK: Object to the form of the 10 question.</p> <p>11 A Yeah, I --</p> <p>12 MR. McCORMACK: Assumes facts.</p> <p>13 A Sorry. Sorry. I interrupted you, Mr. 14 McCormack.</p> <p>15 MR. McCORMACK: No. I was just saying, 16 object to the form of the question. It assumes 17 facts about what the circumstances were relative to 18 this provision and the activities on the site.</p> <p>19 Q (By Ms. Nagle) So, Mr. Price, going back 20 to my question, it states here that "Contractor will 21 not be restricted regarding movement or transport of 22 soil materials," but is it your testimony today that 23 there was actually a limitation in place regarding 24 how IEA could move or transport soil materials 25 within the project?</p>
<p>Page 51</p> <p>1 rock and whether it's -- I think that would make 2 common sense in this particular paragraph or 3 sentence.</p> <p>4 Q Do you have an understanding of what soil 5 materials refers to right here (indicating)?</p> <p>6 A I think soil materials could be anything 7 as far as soil.</p> <p>8 Q Would it be the materials excavated during 9 construction of the Osage Wind Farm project site?</p> <p>10 A (Inaudible.)</p> <p>11 THE REPORTER: Okay. I didn't hear the -- 12 could you repeat your answer?</p> <p>13 A I said it could.</p> <p>14 Q (By Ms. Nagle) Okay. Now, is it your 15 understanding that this communication related to 16 how -- regarding the movement or transport of soil 17 materials, was this consistent with what Enel 18 communicated to IEA during the construction phase of 19 the project?</p> <p>20 A No, we -- no, there was a limitation to 21 moving of rocks, and there's also some common sense 22 of when you transport, some economic decisions with 23 -- dealing with soil materials, so they are usually 24 defined within the agreement, because there's a cost 25 impact associated with it.</p>	<p>Page 53</p> <p>1 A Yes.</p> <p>2 Q Do you know when that limitation was put 3 in place?</p> <p>4 A Well, this contract was replaced. This 5 wasn't -- as far as I understand, this is the RMC 6 contract, this is the contract that was used to 7 execute the project, so you are asking me the 8 question, and I'm lost to the contract.</p> <p>9 Q Okay. Look at the next paragraph, F, it 10 states, "The contract price includes the following 11 quantities of materials for excavation." Then it 12 lists a lot of materials here. If you look at the 13 top of the next page it says, "Contractor will be 14 responsible to track excavation volumes periodically 15 throughout the project." What is your understanding 16 of what is meant by "track excavation volumes 17 periodically throughout the project"?</p> <p>18 A I think it's self-explanatory. So 19 contractors -- that they would track the excavated 20 volumes, how much material was removed from the --</p> <p>21 Q And I --</p> <p>22 A -- in the excavation process.</p> <p>23 Q And do you know whose job that was 24 primarily, like what individual at IEA was 25 responsible for tracking excavation problems -- or</p>

<p>Page 54</p> <p>1 volumes, excuse me.</p> <p>2 A No.</p> <p>3 Q Okay.</p> <p>4 A It says here the contractors. The</p> <p>5 contractors are defined in the terms as contractor.</p> <p>6 And this particular agreement says that would be the</p> <p>7 case now.</p> <p>8 Q Okay. If you look at paragraph F -- I'm</p> <p>9 sorry, paragraph G here, it says, "Rock blasting or</p> <p>10 removal has not been included." What does that</p> <p>11 mean?</p> <p>12 A Well, the rock blasting, when you are</p> <p>13 doing an excavation, if the rock material is too</p> <p>14 hard, it requires blasting, so, therefore, this is a</p> <p>15 commercial agreement between two parties. So what</p> <p>16 it's reflecting here is if -- if blasting is</p> <p>17 required, the contract is explaining that it's not</p> <p>18 part of the scope of work. So if you have to blast</p> <p>19 the rock, then it would be -- this would be an</p> <p>20 example of what you would require a change order.</p> <p>21 Q So why wasn't rock blasting initially</p> <p>22 included in this scope of work?</p> <p>23 A Again, I wasn't part of this contract.</p> <p>24 Q Do you know why it wasn't included in the</p> <p>25 contract?</p>	<p>Page 56</p> <p>1 Q And when you mentioned that it was based</p> <p>2 on the geotechnical assessment, do you recall</p> <p>3 roughly the month or year when it was determined</p> <p>4 that rock blasting would be necessary?</p> <p>5 A I don't. What I recall is when we</p> <p>6 acquired the project we did a technical assessment,</p> <p>7 and we thought there was some foundations that was</p> <p>8 required, and we put a stop or put a figure in the</p> <p>9 contract, which was 27 -- 27 excavation sites that</p> <p>10 would need to be potentially blasted, so that -- and</p> <p>11 the primary reason is that when you do a</p> <p>12 geotechnical investigation, you just do a sampling</p> <p>13 of the subsurface situation, so our assessment of</p> <p>14 the subsurface conditions had some question marks,</p> <p>15 whether it needed -- it could be excavated through</p> <p>16 normal -- an excavation process, so you would put a</p> <p>17 provision in the contract to allow the subsurface</p> <p>18 blasting if it was necessary, up to 27 foundations.</p> <p>19 Q So the determination to blast these 27</p> <p>20 foundations, would that have been made after -- this</p> <p>21 draft agreement that we're looking at now was</p> <p>22 drafted in March of 2013?</p> <p>23 A Yes.</p> <p>24 Q Would it -- would that determination to</p> <p>25 blast those 27 sites have been made in 2014?</p>
<p>Page 55</p> <p>1 A I just explained I didn't know why -- I</p> <p>2 didn't have anything to do with this contract. It</p> <p>3 was negotiated before -- this is something that</p> <p>4 existed before the project.</p> <p>5 Q Was rock blasting eventually used at the</p> <p>6 Osage Wind Farm project site?</p> <p>7 A Yes.</p> <p>8 Q Do you know who made the decision to</p> <p>9 utilize rock blasting?</p> <p>10 A Well, it was a combination -- yeah, I do</p> <p>11 know.</p> <p>12 Q Who would that have been?</p> <p>13 A Well, it was the contractor, site manager</p> <p>14 or even project management and myself.</p> <p>15 Q And when was that decision to use rock</p> <p>16 blasting made?</p> <p>17 A Well, there was some decision to blast a</p> <p>18 certain amount of foundations based on some</p> <p>19 geotechnical assessments that was done at the time</p> <p>20 of the updated agreement. So there was some</p> <p>21 assessment where rock blasting was expected to be</p> <p>22 needed because of the hardness of the rock, and then</p> <p>23 throughout the execution of the project, there was</p> <p>24 additional rock blasting that was performed by the</p> <p>25 contractor, IEA.</p>	<p>Page 57</p> <p>1 A I don't know exact date, but it was</p> <p>2 certainly in 2014, the summer of 2014 when we were</p> <p>3 negotiating the new contract that it was included.</p> <p>4 Q Okay. And so for purposes of the 2013</p> <p>5 legal opinion that Modrall Sperling undertook, would</p> <p>6 the attorneys who worked on that legal opinion,</p> <p>7 would they have been informed at that time in 2013</p> <p>8 that rock blasting or removal was not being used at</p> <p>9 the Osage Wind farm site?</p> <p>10 MR. McCORMACK: Hold on. Object to the</p> <p>11 form of the question, lack of foundation, but if you</p> <p>12 know the answer, you may --</p> <p>13 A I don't know the answer. I wasn't</p> <p>14 involved.</p> <p>15 Q (By Ms. Nagle) Okay. And in 2014 when</p> <p>16 the determination was made to use rock blasting of</p> <p>17 the 27 excavation sites, who at Enel informed</p> <p>18 Modrall Sperling of this change in construction?</p> <p>19 MR. McCORMACK: Object to the form of the</p> <p>20 question, assumes facts. If you know the answer,</p> <p>21 you can answer.</p> <p>22 A First of all, I don't know if it was a</p> <p>23 change. I don't know what the legal team knew</p> <p>24 before, other than what was written in the legal</p> <p>25 opinion. So I didn't know if they knew -- if they</p>

<p>Page 58</p> <p>1 didn't know about blasting or not, because I wasn't  2 there, I didn't know. In the 2014 opinion, there  3 was explanation given that rock blasting was done,  4 so I know that it was part of the input factor of  5 which you referred to earlier as facts of the  6 process of excavation. 2013, I don't know.  7 <b>Q (By Ms. Nagle) Okay. So you're not sure</b>  8 <b>who at Enel informed Modrall Sperling in the summer</b>  9 <b>of 2014 that rock blasting would occur; is that</b>  10 <b>correct?</b>  11 MR. McCORMACK: Object to the form of the  12 question, inconsistent with his answer, but you can  13 answer it again.  14 A I believe I've already discussed that. So  15 we, as a group, got together as a team, especially  16 when we received this notification from the Bureau  17 of Indian Affairs, and we, like I said, asked to --  18 the activity of mining, so we got together to  19 describe what activity we were doing on site so it  20 could be assessed on -- you know, is that considered  21 mining. So myself, from the technical team, as well  22 as my support staff, described the process that was  23 being taken place at the site.  24 <b>Q And who else would have been in these</b>  25 <b>discussions that you've just referred to besides</b></p>	<p>Page 60</p> <p>1 discussions.  2 <b>Q Okay.</b>  3 A So -- of the activities that we were doing  4 at the sites. We had multiple meetings with  5 multiple entities to describe, your term, facts upon  6 excavation of what was going on at the site.  7 <b>Q Would Giuseppe DiMarzio have been in these</b>  8 <b>meetings?</b>  9 A In some of them, yes.  10 <b>Q Okay. What about Matt Gillhausen?</b>  11 A Matt, I think, was TradeWinds, so I  12 believe so, yes.  13 <b>Q Okay. What about Jennifer Dean?</b>  14 A I'm not sure.  15 <b>Q Okay. What about Jacob Valentine?</b>  16 A Not sure.  17 <b>Q Okay. Jeff Riles?</b>  18 A Jeff Riles. Jeff Riles was a  19 communication person who helped with our  20 communications on site, so he would be on some of  21 them.  22 <b>Q Okay. What about Mike Storch?</b>  23 A Mike Storch was on some, as well as the  24 high level discussions with -- he's the chief  25 operating officer and had a big input on the</p>
<p>Page 59</p> <p>1 <b>yourself?</b>  2 A I believe you already asked that question,  3 and I've already answered it.  4 <b>Q Okay. I'm not sure that I understand that</b>  5 <b>you've answered specifically as to the conversations</b>  6 <b>you were just describing. So who else would have</b>  7 <b>been involved in these discussions with you that you</b>  8 <b>just referred to in the summer of 2014?</b>  9 A It's the question where you asked me about  10 the facts, and I asked you -- I returned, I said,  11 what facts, and you asked me facts associated with  12 the excavation and the process of the plant, and I  13 explained to you how we got together and presented  14 the information and who I thought was on those  15 calls.  16 <b>Q Okay. So in terms of the other</b>  17 <b>individuals, who would have been on those calls?</b>  18 <b>Would it have been Joan Heredia?</b>  19 A Yes, for sure.  20 <b>Q Okay. What about Francesco Venturini?</b>  21 A He's a CO, he could have been, but -- and  22 we had multiple calls, as I believe I explained to  23 you. So you want me to explain it again. We had,  24 you know, high level, executive level, what I call  25 high level discussions, and then various group level</p>	<p>Page 61</p> <p>1 business transaction of the project.  2 <b>Q Okay. And what about Aaron Weigel?</b>  3 A I believe so.  4 <b>Q Okay. Thank you. All right. So just one</b>  5 <b>last thing with this document. If you look here on</b>  6 <b>page ending in Bates stamp 3779, under WTG</b>  7 <b>Foundations, it looks like it says, "Construct 94</b>  8 <b>Turbine Foundations in the locations provided by</b>  9 <b>owner and achieve foundation completion." Is it</b>  10 <b>your understanding that the initial plan was to</b>  11 <b>construct 94 separate wind turbines?</b>  12 A Again, this is -- this is what the  13 agreement says. So I'm unclear why you are asking.  14 So it's -- the intention of this particular  15 agreement reflects 94 foundations, yes.  16 <b>Q Thank you. So I'm now going to introduce</b>  17 <b>another exhibit. So this -- let's see, let me pull</b>  18 <b>it up. So I believe this will be -- I believe this</b>  19 <b>will be Exhibit 103 that we are now looking at. And</b>  20 <b>Exhibit 103 is Bates stamped Osage Wind-024565, and</b>  21 <b>it is another scope of work agreement similar to the</b>  22 <b>one we just looked at. I will represent to you that</b>  23 <b>based on its location within defendants' production</b>  24 <b>and the Bates stamping of it, it appears to be the</b>  25 <b>June 2014 version. Are you familiar with this</b></p>

<p>Page 62</p> <p>1 document, Mr. Price?</p> <p>2 (Exhibit 103 marked for identification.)</p> <p>3 A When was it executed, when was this</p> <p>4 signed?</p> <p>5 Q (By Ms. Nagle) You know what, I am not</p> <p>6 actually certain, but let me see if there's anything</p> <p>7 at the end that would indicate, and I don't know --</p> <p>8 do you know whether there were various versions that</p> <p>9 were worked on before it was actually, finally</p> <p>10 executed?</p> <p>11 A See, my recollection is there was an</p> <p>12 existing agreement, and then we transitioned to RMT</p> <p>13 when RMT was purchased by IEA. So I'm trying to --</p> <p>14 at some point RMT became IEA, so that's why I'm kind</p> <p>15 of wondering here, is -- with the agreement, the</p> <p>16 execution version should have been perhaps between</p> <p>17 Osage Wind and IEA, or it could have been RMT, and</p> <p>18 then -- and then at the execution of the project,</p> <p>19 RMT was finally acquired by IEA, so that's why I'm</p> <p>20 -- that's why I asked you about the timing --</p> <p>21 Q Okay.</p> <p>22 A -- because if you told me the timing, then</p> <p>23 I can give you more of a clarity on the history and</p> <p>24 my involvement with this agreement.</p> <p>25 Q Do you recall exactly when IEA purchased</p>	<p>Page 64</p> <p>1 back to the other agreement, you'll understand.</p> <p>2 Q Okay.</p> <p>3 A Because it was a smaller wind turbine;</p> <p>4 therefore, it required less foundations to meet the</p> <p>5 output of the facility.</p> <p>6 Q So like I said, based on where this is</p> <p>7 placed in defendants' production, we're thinking</p> <p>8 this is the June 2014 version of the scope of work.</p> <p>9 Does that sound right to you, or would you assume</p> <p>10 that this decision to move to 84 turbines would have</p> <p>11 happened at a different time?</p> <p>12 A Well, I think it happened in 2014 for</p> <p>13 sure. It's -- the new turbines, the GE 1.79, was</p> <p>14 something that we were looking at through Enel. The</p> <p>15 previous entity was the lesser rated machine. So it</p> <p>16 would be at one point where Enel was involved in the</p> <p>17 project. I'm still unsure, provided this is the</p> <p>18 execution version. I -- You know, my feeling it is</p> <p>19 not, but, you know, I would prefer to have -- you</p> <p>20 know, for you to present a document that had -- that</p> <p>21 said either execution version or signed version, and</p> <p>22 then I would know for sure, for certain.</p> <p>23 MR. McCORMACK: And just for the record, I</p> <p>24 recognize we're in a tough spot here, because we're</p> <p>25 doing this all through remote efforts, but I have</p>
<p>Page 63</p> <p>1 RMT?</p> <p>2 A I thought it was -- again, it was a while</p> <p>3 ago, so I thought it was relative -- my recollection</p> <p>4 is IEA was from the start -- I thought our contract</p> <p>5 was with IEA, but, again, I'm -- it's been a long</p> <p>6 time ago, so --</p> <p>7 Q Sure.</p> <p>8 A -- IEA was the entity that executed the</p> <p>9 project.</p> <p>10 Q Sure. If we look at the page ending in</p> <p>11 Bates stamp 24575, let's see here, here under WTG</p> <p>12 Foundations, it says, "Construct 84 Turbine</p> <p>13 Foundations in the locations provided by owner and</p> <p>14 achieve foundation completion." Do you recall that</p> <p>15 at one point the number of wind turbines changed to</p> <p>16 84?</p> <p>17 A Yes.</p> <p>18 Q Do you recall when that change was made?</p> <p>19 A Well, it's actually quite simple. If you</p> <p>20 look at the last sentence, it says, "The foundations</p> <p>21 will be designed to accommodate GE 1.79-100</p> <p>22 turbines." If you looked at the other agreement it</p> <p>23 would be 1.7, so to meet the general output power</p> <p>24 the name plate ratings of turbines is higher, so,</p> <p>25 therefore, you need less foundations, so if you go</p>	<p>Page 65</p> <p>1 the same reaction, which is I don't know what the</p> <p>2 documents are necessarily. We're only looking at</p> <p>3 one provision in them, but I'd just note that for</p> <p>4 the record for whatever it's worth. Sorry, Ms.</p> <p>5 Nagle. Go ahead.</p> <p>6 MS. NAGLE: Okay. Thank you.</p> <p>7 Q (By Ms. Nagle) So Mr. Price, do you know</p> <p>8 whether or not this scope of work would have been in</p> <p>9 effect at the time that you were vice president of</p> <p>10 engineering and construction, in charge of the</p> <p>11 project?</p> <p>12 A Eighty-four turbines, 84 turbine sites was</p> <p>13 what we -- what we had planned to do. I believe we</p> <p>14 had the 89 potential sites, but 84 excavations.</p> <p>15 Q Okay.</p> <p>16 A We had some alternate sites in the design</p> <p>17 to -- in the event we encountered some difficult</p> <p>18 sites or there's some cavern or some geotechnical</p> <p>19 feature, maybe some oil and gas interference or</p> <p>20 something, so we had a -- in the design work, we had</p> <p>21 some surplus sites planned for. So in some</p> <p>22 documents you might see 89, but the actual</p> <p>23 foundations that were planned to be excavated was</p> <p>24 84.</p> <p>25 Q Okay. And if you look up just a little</p>

<p>Page 66</p> <p>1 bit above here under F, it says, "Rock blasting or 2 removal has been included for 27 turbine locations." 3 Is this the decision you referred to when we were 4 looking at the earlier agreement where you stated 5 that at some point the decision was made for rock 6 blasting to be used at 27 turbine locations? 7 A Yes. 8 Q Okay. And I note, too, that previously 9 there was language here that we looked at that was 10 actually paragraph F that stated -- that referred to 11 the contractor tracking the excavation volumes 12 periodically through the project. I note that 13 that's -- that's not here. Do you know why that 14 language regarding tracking the excavation volumes 15 was removed? 16 A No. 17 Q Okay. So if we go up a little bit further 18 under E, it still says, "Contractor will not be 19 restricted regarding movement or transport of soil 20 materials, nor will contractor be responsible for 21 fees or delays associated with mineral rights 22 issues." So is it your understanding that as of 23 June 2014 the limitation on movement of soil 24 materials had not yet been communicated to IEA? 25 A I don't understand your question. Are</p>	<p>Page 67</p> <p>1 IEA that paragraph E is not correct and that 2 actually IEA is restricted in terms of movement of 3 soil on the Osage Wind farm project? 4 MR. McCORMACK: Hold on. Object to the 5 form of the question -- hold on. Object to the form 6 of the question as assuming facts, but you can 7 answer if you have an answer. 8 A Look, as I said before, I would be much 9 more comfortable to address this question, is this 10 the execution version of the contract between us and 11 IEA? 12 Q We don't have in our production from 13 defendants any version of this that's actually 14 signed. My understanding is that this is an exhibit 15 to a different contract, and so we have not -- if 16 there is an executed version where there are 17 signatories to this, it has not been produced to us. 18 MS. NAGLE: So maybe I put that back on 19 Mr. McCormack and ask that, are you aware of an 20 executed version in your production? 21 MR. McCORMACK: I'm not, but we can 22 certainly take that request under advisement. 23 MS. NAGLE: Okay. Well, we'll just 24 reserve the right to keep this deposition open 25 until -- since you are objecting to the questions</p>
<p>Page 67</p> <p>1 you -- 2 Q So -- no, go ahead. 3 A Go ahead. Well, look, this -- again, this 4 was -- as I explained before, this was a contract 5 that was a standard contract from another entity, so 6 I don't know the -- a lot of contract terms that you 7 see in contracts are standard contract terms that I 8 would say are boilerplate. This was not an Enel 9 contract, so we inherited this project, and when we 10 inherited this contract, we decided rather than 11 taking the time to negotiate a completely new 12 agreement, that it was better to take the existing 13 agreement and try to work with it and -- for the 14 purpose of expedience. 15 So when we had these type of contract 16 terms -- you know, if it was an Enel contract I 17 could generally tell you, yeah, that's been in, you 18 know, 20 of our contracts, so it's not specific to 19 this Osage project. So there is typical language in 20 most contracts that have something similar to this, 21 so it's -- you know, it's generally boilerplate type 22 language and not necessarily any correlation to the 23 existing situation that exists with Osage. 24 Q Okay. Do you have an understanding of who 25 at Enel would have been responsible for informing</p>	<p>Page 68</p> <p>1 and the witness is unable to answer, based on those 2 objections and the fact that you are waiting for us 3 to show him an executed version. So we'll keep the 4 deposition open until you all are able to provide us 5 with that executed version. 6 MR. McCORMACK: Well, a couple of things. 7 Number 1, I haven't stopped this witness from 8 answering any questions, and, number 2, I'm not -- I 9 don't know if there is an executed version, so I 10 understand you've got your position, and I just told 11 you mine. 12 MS. NAGLE: Okay. Thank you. We'll await 13 the receipt of the executed version. Thank you so 14 much. 15 Q (By Ms. Nagle) Okay. So going back to my 16 question, Mr. Price, what is your understanding of 17 when and how Enel communicated to IEA that they 18 actually were restricted in terms of moving soil on 19 the Osage Wind Farm project site? 20 MR. McCORMACK: Again, object to the form 21 of the question to the extent that it assumes facts, 22 but if the question makes sense to you, you may 23 answer. 24 A Well, you know, I recall certainly within 25 the aspect of the project when we had this</p>

<p>1 discussion with IEA concerning the BIA question of  2 permit. Typically, on projects of this nature, I  3 think this provision agrees, and it's -- because of  4 the sensitivities with the Osage mineral rights, you  5 know, I have the sense that since this is more of a  6 boilerplate type sentence, that this doesn't have  7 the sensitivities that you are addressing, that had  8 some sensitivities within rights, because we, at the  9 time, didn't feel we had this as an issue. So it  10 wasn't in any of our permits, it wasn't in any of  11 our requirements. So it wasn't, you know, as  12 sensitive as you are suggesting.</p> <p>13 I do not know if this is, in essence, the  14 execution version. Typically, what we do to -- in  15 projects, this would have been attached, a scope of  16 work or a technical specification, there would have  17 been an Enel specification. The Enel specification  18 would have delineated exactly how the contractor  19 would be to execute the project, and in there it  20 would say how to do. Typically, contracts of this  21 nature, when you have the -- this is a form of a  22 commercial agreement, which has a lot to do with the  23 commercial terms or fees associated. So this  24 language would be more into protection or risk  25 management of the contract. The technical</p>	<p>1 than the technical specification.</p> <p>2 <b>Q (By Ms. Nagle) So I understand you're</b>  3 <b>saying that the time frame was when the</b>  4 <b>conversations were happening with the BIA, but my</b>  5 <b>question was who, and so I'll just repeat my</b>  6 <b>question. Who at Enel was responsible for</b>  7 <b>communicating this limitation in terms of movement</b>  8 <b>of soil on the Osage Wind Farm project to IEA?</b></p> <p>9 MR. McCORMACK: Same objection. You can  10 answer.</p> <p>11 A Who was responsible? I was responsible  12 for the execution of the contract, so, you know,  13 ultimately it was me, but we have different people  14 that communicate with the project, so Bill Moskaluk  15 would have, Giuseppe DiMarzio. The ultimate  16 responsibility to execute this project would have  17 been myself. Did I have specific conversations with  18 IEA, I did, yeah, with Chris Hanson.</p> <p>19 <b>Q (By Ms. Nagle) Okay.</b>  20 A And --  21 <b>Q Go ahead.</b>  22 A But the site team would have been Bill  23 Moskaluk, et cetera.  24 <b>Q Okay. Thank you. All right. Let's look</b>  25 <b>at another --</b></p>
<p>1 specifications will delineate how the project is  2 executed. So I think if you are looking at that  3 language that describes this type of thing and then  4 limitations, I think the more appropriate document  5 you should be referring to is the technical  6 specifications.</p> <p>7 <b>Q Okay. And whose responsibility would it</b>  8 <b>have been at this time at Enel to communicate to IEA</b>  9 <b>that they were restricted in terms of moving soil at</b>  10 <b>the wind farm project?</b></p> <p>11 MR. McCORMACK: I'm going to object to the  12 form of the question. It's asked and answered and  13 also assumes facts, but you can answer the question  14 if you have an answer.</p> <p>15 A The restricted -- the restricted of moving  16 materials was presented at the -- at the time we got  17 the BIA. We also had a technical specifications  18 document where the contractor was to comply with the  19 execution of the project, and if the contractor  20 wanted to do something different than what the  21 technical specification describes, they would have  22 to go through an RFI process. RFI stands for  23 request for information, request for a deviation of  24 spec, and even, potentially, a change order request  25 if there's a cost associated with doing it different</p>	<p>1 MR. McCORMACK: Ms. Nagle, is this a good  2 time to take our morning break --</p> <p>3 MS. NAGLE: Sure.</p> <p>4 MR. McCORMACK: -- our early morning  5 break?</p> <p>6 MS. NAGLE: Sure. Absolutely. How long  7 would we like to take a break for?</p> <p>8 MR. McCORMACK: How about 15 minutes, so  9 6:55?</p> <p>10 MS. NAGLE: Okay. So 6:55 --</p> <p>11 MR. McCORMACK: Your time.</p> <p>12 MS. NAGLE: -- Central Oklahoma time.</p> <p>13 MR. McCORMACK: Yes.</p> <p>14 MS. NAGLE: Does that work for the United  15 States?</p> <p>16 MS. McCLANAHAN: Yes.</p> <p>17 MS. NAGLE: Okay. Great. Let's go off  18 the record and come back at 6:55.</p> <p>19 MR. McCORMACK: Great. Thank you so much.</p> <p>20 THE VIDEOGRAPHER: We are off the record  21 at 6:39 a.m. central time.  22 (Recess was had.)  23 THE VIDEOGRAPHER: We are back on the  24 record at 6:55 a.m. central time.  25 MS. NAGLE: Okay. Just to be clear, is</p>

<p>1 the United States attorney's office here as well?</p> <p>2 MS. McCLANAHAN: Yes, we are.</p> <p>3 MS. NAGLE: Okay. Fantastic. Thanks so</p> <p>4 much.</p> <p>5 <b>Q (By Ms. Nagle) All right. So moving</b></p> <p>6 <b>along, I am now going to show an exhibit that has</b></p> <p>7 <b>previously been marked in this litigation as Exhibit</b></p> <p>8 <b>46. And it is a document Bates stamped on Osage</b></p> <p>9 <b>Wind-000381. And it is yet another scope of work</b></p> <p>10 <b>contract. I will note that based on where it falls</b></p> <p>11 <b>in within defendants' production, it appears to be</b></p> <p>12 <b>the August 11th, 2014, version of the scope of work.</b></p> <p>13 (Exhibit 46 previously marked for</p> <p>14 identification.)</p> <p>15 <b>Q (By Ms. Nagle) Mr. Price, are you</b></p> <p>16 <b>familiar with this document?</b></p> <p>17 A I believe so, yes.</p> <p>18 <b>Q Do you know who from Enel in August of</b></p> <p>19 <b>2014 would have been negotiating this scope of work?</b></p> <p>20 A It would have been the -- for Enel it</p> <p>21 would have been our procurement team that was</p> <p>22 supported by myself and staff.</p> <p>23 <b>Q Great. So if we look at page 11, which is</b></p> <p>24 <b>ending in Bates stamp 391 --</b></p> <p>25 A As an observation, going back.</p>	<p>Page 74</p> <p>1 A We started mobing into the sites in</p> <p>2 August. I recall we started doing some construction</p> <p>3 activities in September, so we started some</p> <p>4 mobilizations in August. That's my recollection.</p> <p>5 <b>Q Uh-huh. Okay. If we look at the page</b></p> <p>6 <b>ending in Bates stamp 391. Whoops, here we go. I</b></p> <p>7 <b>note here paragraph F still seems to be the same,</b></p> <p>8 <b>"Rock blasting or removal has been included for 27</b></p> <p>9 <b>turbine locations." Is that your recollection that</b></p> <p>10 <b>that was the plan when construction commenced, was</b></p> <p>11 <b>to use rock blasting at 27 wind turbine locations?</b></p> <p>12 A So it's -- rock blasting or removal has</p> <p>13 been included for 27 locations. So it's included,</p> <p>14 it doesn't necessarily mean that you would need to</p> <p>15 do 27, so -- but I think 27 was -- was approved or</p> <p>16 commercially accepted as part of the contract.</p> <p>17 <b>Q Do --</b></p> <p>18 A So in other words, if you did 20</p> <p>19 foundations, it had a provision to do up to 27.</p> <p>20 Anything over 27, then perhaps the contractor could</p> <p>21 consider this change order.</p> <p>22 <b>Q Do you know if a change order request was</b></p> <p>23 <b>ever submitted to blast more than 27 locations?</b></p> <p>24 A Yes.</p> <p>25 <b>Q Do you know when that change order would</b></p>
<p>Page 75</p> <p>1 <b>Q Uh-huh.</b></p> <p>2 A If you look at the title of the document.</p> <p>3 <b>Q Uh-huh.</b></p> <p>4 A It's the execution version that's part of</p> <p>5 the scope. It has a different title than the</p> <p>6 document we referred to before, so this means the</p> <p>7 document we referred to before was an obsolete</p> <p>8 document that you asked me questions on.</p> <p>9 <b>Q Okay.</b></p> <p>10 A This exhibit is part of a contract, so the</p> <p>11 exhibit which is the balance of plant, so you'll</p> <p>12 notice that this definition -- or this title is</p> <p>13 different from the other, so the other was indeed an</p> <p>14 -- obsolete.</p> <p>15 <b>Q Okay. So is it your testimony that this</b></p> <p>16 <b>version here that we're looking at, Exhibit 46,</b></p> <p>17 <b>would have been the executed version?</b></p> <p>18 A I don't know if it's the executed version,</p> <p>19 but it's certainly more -- more in scope with what</p> <p>20 activities were had, as well as the -- it is more</p> <p>21 dated within the activities that were about ready to</p> <p>22 start. Construction started real soon after this</p> <p>23 agreement, after this date in August.</p> <p>24 <b>Q When exactly did construction start; do</b></p> <p>25 <b>you recall?</b></p>	<p>Page 77</p> <p>1 <b>have been submitted?</b></p> <p>2 A Change order, there was a lot of</p> <p>3 discussions in the change order in the -- 2014. I</p> <p>4 think the final submittal of the change order</p> <p>5 occurred or agreement to the cost was the following</p> <p>6 year. There was a dispute between both parties</p> <p>7 whether the blasting was necessary or not.</p> <p>8 <b>Q Okay. And so in terms of that dispute,</b></p> <p>9 <b>who took the position that blasting was not</b></p> <p>10 <b>necessary?</b></p> <p>11 A The view is when you do rock blasting,</p> <p>12 it's such that when you do standard excavation work</p> <p>13 that the standard excavation, which is through</p> <p>14 either some manual means with -- you know, from a</p> <p>15 hydraulic or pneumatic type jackhammer to an</p> <p>16 excavator, which is a tractor that has tracks and</p> <p>17 has a big, large bucket on the end, and it's trying</p> <p>18 to rip soil and grind it up as it's doing its</p> <p>19 foundation. Sometimes this is very time and labor</p> <p>20 intensive, and it's simpler -- could be envisioned</p> <p>21 simpler if the contractor was allowed to blast. And</p> <p>22 so the contractor represented they were taking too</p> <p>23 long to do this standard excavation process and then</p> <p>24 decided to do more blasting to keep the project on</p> <p>25 schedule. Also, our concern was, as Enel, is it</p>

<p>Page 78</p> <p>1 became -- I think it's a commercial consideration,  2 since it is an opportunity for the contractor to --  3 to get paid for something more than 27 locations.  4 So there's somewhat of a conflict there.  5 <b>Q Okay. If you look above at paragraph E,</b>  6 <b>here it states, "Other than balancing material where</b>  7 <b>is presently existing, contractor will be restricted</b>  8 <b>regarding movement or transport of soil materials,</b>  9 <b>nor will contractor be responsible for fees or</b>  10 <b>delays associated with mineral rights issues." What</b>  11 <b>is your understanding of what is meant here by the</b>  12 <b>phrase, "other than balancing material where is</b>  13 <b>presently existing"?</b>  14 A Balancing material is just -- well,  15 balancing of material -- it's the balancing that you  16 would have -- my read on that is it's just that,  17 where you -- if -- present conditions, you know, you  18 could move soil around within that present  19 condition. So if you are moving a hole, you are not  20 putting it precisely back in that hole as it came  21 out, it's balancing and moving things around.  22 <b>Q And what is your understanding by the</b>  23 <b>phrase, "contractor will be restricted regarding</b>  24 <b>movement or transport of soil materials"?</b>  25 A That they can't move soil materials.</p>	<p>Page 80</p> <p>1 <b>Q Okay. And was that -- was that limitation</b>  2 <b>regarding the movement of soil materials that's</b>  3 <b>included in the technical specifications you are</b>  4 <b>referring to, is that limitation a limitation that</b>  5 <b>Enel decided upon in reliance on Modrall Sperling's</b>  6 <b>legal analysis?</b>  7 A Well, obviously, the -- I'm not sure if  8 the technical specifications included that  9 assessment. Clearly, the 2014 -- the letter wasn't  10 because it was a date done that was subsequent to  11 this negotiation, so I'm uncertain. What I do  12 recall is we had -- there was a purpose or reason  13 why we wanted to do it, and many times it's not  14 consideration of mining, it's a consideration of  15 availability of fill, it's -- there's a technical  16 reason why we would want to do that. And so there  17 was an engineering assessment done for prior  18 reasons, and then the assessment was, this is how we  19 want IEA to construct the project, and, again,  20 that's -- so the commercial terms or commercial part  21 of the agreement should be consistent with the  22 execution -- or the technical specs.  23 <b>Q Okay. Thank you for that. Let's move to</b>  24 <b>our next exhibit. Just to be clear, I know I just</b>  25 <b>took that exhibit down, but what we were just</b></p>
<p>Page 79</p> <p>1 <b>Q And do you know who made the decision at</b>  2 <b>Enel to include this language in this scope of work?</b>  3 A I believe it was -- it was discussions  4 that we had during the contract execution that was  5 consistent with the scope of work document. The  6 scope of work document had clarity on what -- on how  7 to do the -- the excavation works and how to execute  8 the projects, so the contract was suggested to be  9 consistent with that.  10 <b>Q And so if you'll recall, the last version</b>  11 <b>of the document that we looked at, Exhibit 46 from</b>  12 <b>the previous version that we looked at -- or sorry,</b>  13 <b>this is -- sorry, not Exhibit 46, but the June 2014</b>  14 <b>version that we looked at did not include this</b>  15 <b>limitation. Do you have an understanding of why the</b>  16 <b>decision was made to add this limitation to this</b>  17 <b>version, this August 2014 version?</b>  18 A I believe I just answered that question,  19 to be consistent with the scope of work documents  20 from the technical specifications.  21 <b>Q And so are there scope -- is it your</b>  22 <b>testimony that there are scope of work documents</b>  23 <b>with technical specifications that included this</b>  24 <b>limitation?</b>  25 A I believe so.</p>	<p>Page 81</p> <p>1 <b>looking at, would that have been the scope of work</b>  2 <b>that you would have operated under for the rest of</b>  3 <b>the construction of the Osage Wind Farm, or do you</b>  4 <b>think there's a separate scope of work out there</b>  5 <b>that would have covered the construction?</b>  6 A It should be initialed. It should be  7 signed. So, normally, when we enter into  8 agreements, there's the -- you know, each page,  9 because it's a record. So I didn't see any  10 initials, I didn't see the document. I didn't see  11 if it was signed. So from the date you've  12 represented, it's certainly very close to the  13 execution time frame.  14 <b>Q Okay.</b>  15 A It's not typical to -- an execution  16 version is just that, it has signatures, and it has  17 initials at the bottom of each page.  18 <b>Q Okay. All right. Thank you. I am going</b>  19 <b>to introduce our next exhibit, which is Exhibit 104,</b>  20 <b>and it is Bates stamped EGPNA-000001, and the title</b>  21 <b>of the document is Construction Management</b>  22 <b>Agreement, dated August 19th, 2014, between Enel</b>  23 <b>Green Power North America as the construction</b>  24 <b>manager and Osage Wind, LLC as the company.</b>  25 <b>Mr. Price, are you familiar with this document?</b></p>

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1 (Exhibit 104 marked for identification.)

2 A Yes.

3 **Q (By Ms. Nagle) Were you involved at all**

4 **in the negotiation of this document?**

5 A It's an internal document that describes

6 the scopes and responsibilities of the respective

7 entities, so, yeah, I was part of this agreement

8 from a contribution perspective, yeah, I was. This

9 is also a standard agreement that we do between

10 projects and execution that Enel does.

11 **Q Okay. If we look at the page ending in**

12 **Bates stamp 06, we have here a definition of**

13 **governmental or regulatory authority that refers to**

14 **meaning "any court, tribunal, authority, agency,**

15 **commission, official, administrative body or other**

16 **instrumentality of the United States or any state,**

17 **county, city or other political subdivision**

18 **arbitrator or any judicial or quasi-judicial**

19 **tribunal of competent jurisdiction." Do you have an**

20 **understanding of whether or not this definition**

21 **includes the Osage Minerals Council as a**

22 **governmental authority?**

23 A From the definition it would seem to

24 include that.

25 **Q Do you recall any discussions -- when you**

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1 **working on the drafting of this document with your**

2 **team at Enel, do you recall any discussions**

3 **specifically related to the drafting as this term,**

4 **as it is defined here in the agreement?**

5 A No.

6 **Q Okay.**

7 A I think most of these construction

8 agreements are very common between projects and what

9 they are as construction management agreements.

10 It's a way of Enel to do -- to assign the -- who is

11 responsible to execute the project on behalf of the

12 company, so it defines work such that we can get --

13 Enel can be compensated for the work it does in this

14 execution activity. So this -- the majority of

15 these documents are typically internal documents

16 that are between projects, the projects are

17 consistent. So this language is likely very, very

18 similar to all projects we do.

19 **Q Okay. If we look at page 7, the**

20 **definition of permits means, "The permission granted**

21 **by any governmental or regulatory authority to do an**

22 **act that would otherwise be impermissible, including**

23 **all licenses, permits, consents, authorizations,**

24 **approvals, ratifications, certifications,**

25 **registration, exemptions, variances, exceptions and**

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1 **other similar consent granted or issued by any**

2 **governmental or regulatory authority." Would this**

3 **definition -- is it your understanding that this**

4 **definition of permits would include a permit from**

5 **the Osage Minerals Council?**

6 MR. McCORMACK: Object to the form of the

7 question. May be requiring a legal conclusion, but

8 you can answer the question, if you are able.

9 A Well, I -- which particular permit are you

10 referring to?

11 **Q (By Ms. Nagle) Any permit from the Osage**

12 **Minerals Council. Is it your understanding that**

13 **that would be included under the definition of**

14 **permits here in this agreement?**

15 MR. McCORMACK: Same objection.

16 A I think it depends on what the permit is

17 for.

18 **Q (By Ms. Nagle) How about a permit for**

19 **mining?**

20 MR. McCORMACK: Same objection.

21 A I think if there was -- was mining

22 activity and if the permits would be under that, it

23 would be under this definition.

24 **Q (By Ms. Nagle) Okay. If we look on page**

25 **ending in Bates stamp 09 here, Section 2.2, which is**

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1 **titled, Construction Manager Obligations, it states**

2 **that "The Construction Manager, EGPNA, is hereby**

3 **authorized and obligated to perform the following**

4 **services on behalf" -- and this is sort of done here**

5 **at the bottom. "Construction manager is hereby**

6 **authorized and obligated to perform the following**

7 **services on behalf of the company." And then if**

8 **we -- well, actually, first, just one question, do**

9 **you have an understanding whether under Section 2.2,**

10 **whether or not the construction manager was**

11 **authorized and obligated to perform the function of**

12 **obtaining a permit from any applicable governmental**

13 **agencies or authorities?**

14 A It could. I think it potentially could,

15 but in this project with the permits, the permits

16 for the project to begin construction were obtained

17 prior to this agreement going into effect. So all

18 the construction permits were identified and

19 obtained before construction activities were

20 started.

21 **Q And when you referred to those**

22 **construction permits, which entity obtained those**

23 **permits?**

24 A Some -- some of them were from the

25 previous owner. Some of them were for TradeWinds.

<p>Page 86</p> <p>1 <b>Q And were there permits that EGPNA or Enel</b>  2 <b>obtained that TradeWind did not?</b></p> <p>3 A I would have been responsible for some  4 permits, some construction permits, submit some  5 documents. There are some permits that -- my  6 recollection is when we started construction, all  7 the permits were provided. There was some -- like  8 building permits, like a permit that you would  9 build, like, a control room in the substation, you  10 need a building permit, like, you would build a home  11 of sorts. So those permits would be done through  12 the course of the construction of the project and  13 performed by the contractor. So yeah. Does that  14 address your question?</p> <p>15 <b>Q Yes. Thank you. Okay. Looking at the</b>  16 <b>page ending in Bates stamp 16, I note here Section</b>  17 <b>5.5 says, Key Personnel. And it says, "The</b>  18 <b>construction manager shall identify at least one</b>  19 <b>person to be the point of contact with</b>  20 <b>representatives of the company with respect to</b>  21 <b>matters arising under this agreement. Such person</b>  22 <b>shall be reasonably acceptable to the company.</b>  23 <b>Initially, William Price shall be the point of</b>  24 <b>contact on behalf of the construction manager, which</b>  25 <b>is acceptable to the company." What were some of</b></p>	<p>Page 88</p> <p>1 or no or had some consternation of me being the  2 acceptable person or the -- so -- or the point of  3 contact.</p> <p>4 <b>Q Okay. Do you know if there was ever</b>  5 <b>another point of contact that was appointed on</b>  6 <b>behalf of EGPNA under this agreement?</b></p> <p>7 A No.</p> <p>8 <b>Q Okay. All right. Those are all of my</b>  9 <b>questions in relation to that document.</b></p> <p>10 <b>So now we are going to look at a document</b>  11 <b>that has previously been entered in this litigation</b>  12 <b>as Exhibit 36, and this document is Bates stamped</b>  13 <b>Osage Wind PRIV-000414. I will note that it is a</b>  14 <b>memo from Modrall Sperling to -- it's to Bill Scott</b>  15 <b>from Sarah Stevenson, dated October 31st, 2013,</b>  16 <b>regarding the rights of surface owners to use soil.</b>  17 (Exhibit 36 previously marked for  18 identification.)</p> <p>19 <b>Q (By Ms. Nagle) Mr. Price, are you</b>  20 <b>familiar with this document?</b></p> <p>21 A Yes.</p> <p>22 <b>Q And is this the legal opinion from 2013</b>  23 <b>that you referred to earlier?</b></p> <p>24 A Yes.</p> <p>25 <b>Q Do you know who Bill Scott is?</b></p>
<p>Page 87</p> <p>1 <b>your duties and responsibilities as the point of</b>  2 <b>contact on behalf of the construction manager in</b>  3 <b>this -- in terms of this agreement?</b></p> <p>4 A I think the agreement defines what my  5 responsibilities are.</p> <p>6 <b>Q And what is your understanding of how the</b>  7 <b>agreement frames those?</b></p> <p>8 A The execution responsibility of the  9 project.</p> <p>10 <b>Q Okay. And what is your understanding of</b>  11 <b>the phrase, point of contact? What do you take that</b>  12 <b>to mean?</b></p> <p>13 A That if there's an issue or aspects of the  14 project, that I would be the one that was contacted  15 to address it.</p> <p>16 <b>Q And it says here, "shall be reasonably</b>  17 <b>acceptable to the company." Do you understand that</b>  18 <b>the company refers to Osage Wind?</b></p> <p>19 A Yes.</p> <p>20 <b>Q Did Osage Wind have any say in your</b>  21 <b>election?</b></p> <p>22 A (Inaudible.)</p> <p>23 <b>Q I'm sorry. I didn't hear if you answered.</b>  24 A I'm trying to -- these are standard  25 agreements. I mean, I'm not aware if they had a yes</p>	<p>Page 89</p> <p>1 A No.</p> <p>2 <b>Q Okay. Do you know who Sarah Stevenson is?</b>  3 A Yes.</p> <p>4 <b>Q Who is Sarah Stevenson?</b>  5 A She's with us now.</p> <p>6 <b>Q Okay.</b>  7 A She's the representative for the  8 reference -- or legal firm.</p> <p>9 <b>Q And did she represent -- I guess, who did</b>  10 <b>she represent when she drafted this memo in October</b>  11 <b>of 2013?</b></p> <p>12 A The legal firm referenced at the heading  13 of the document.</p> <p>14 <b>Q Was this work performed on behalf of Enel?</b>  15 A I don't know. I wasn't part of this  16 agreement.</p> <p>17 <b>Q Okay.</b>  18 A I wasn't part of the -- I wasn't engaged  19 in the project --</p> <p>20 <b>Q Okay.</b>  21 A -- to any significant extent at this time.</p> <p>22 <b>Q Okay. So if we look here at the question</b>  23 <b>presented, it states, "whether a surface owner who</b>  24 <b>excavates land for the purpose of construction</b>  25 <b>consistent with its surface rights, and does not</b></p>

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1 remove the land excavated from the property, is  
 2 engaged in mining of the mineral estate and requires  
 3 a permit." What is your understanding of why the  
 4 phrase, "and does not remove the land excavated from  
 5 the property" was included here in the question  
 6 presented?  
 7 A My understanding is if you actually remove  
 8 the land and it's used for an alternative purpose  
 9 and there's a -- perhaps a commercial benefit of  
 10 such, then that would be a form of mining, so it  
 11 does not remove the land, how -- so this legal  
 12 opinion says that that would be mining.  
 13 Q Okay. And is that an understanding that  
 14 you have based on the advice you received from your  
 15 legal counsel?  
 16 A Yes.  
 17 Q Okay. If we look at page 2 of this memo  
 18 ending in Bates stamp 415, it states here under  
 19 analysis, "The Osage Tribe has indicated that it  
 20 will assert TradeWinds Energy must receive a mining  
 21 permit from the Osage Minerals Council in order to  
 22 construct and operate the wind farm." Is it your  
 23 understanding that this memo was drafted after  
 24 defendants received communication from the Osage  
 25 Tribe that their position was that a mining permit

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1 was required?  
 2 MR. McCORMACK: Hold on just one second.  
 3 objection, foundation. But you can answer if you --  
 4 if you know the answer.  
 5 A Well, I don't know the answer, because --  
 6 and, again, I wasn't part of this document. I read  
 7 it later, later after it was -- in 2014. It is  
 8 interesting to note that -- that I can't imagine why  
 9 a mining permit would be required to operate the  
 10 facility, because operations of the facility is just  
 11 wind turbines spinning, so no -- so it seems to me  
 12 that in this first page there is a complete  
 13 misunderstanding of what was actually happening on  
 14 the site and what some -- what the Osage Tribe had  
 15 thought to -- whether a permit was required. So why  
 16 would you need a mining permit to operate the  
 17 facility? That's a good question, because no  
 18 minerals are being moved. Construction, yeah,  
 19 there's minerals that are disturbed, but, you know,  
 20 the question is why would it include the operation  
 21 of the wind farm.  
 22 Q Okay. I will note that I don't see the  
 23 word, operation, here in this paragraph. It does  
 24 seem to say that, at least as Sarah Stevenson and  
 25 Bill Scott -- or Sarah Stevenson, who drafted the

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1 memo, put it, that when the Osage Tribe indicated it  
 2 will assert that a mining permit is necessary, the  
 3 phrase that Ms. Stevenson used was "on the grounds  
 4 that the excavation and construction, and permanent  
 5 placement of the towers constitutes mining of the  
 6 Osage's mineral estate." Do you have an  
 7 understanding of what is meant here by excavation in  
 8 addition to construction?  
 9 MR. McCORMACK: Object to the form.  
 10 A I --  
 11 MR. McCORMACK: Wait, wait, wait. Object  
 12 to the form of the question, foundation, but you can  
 13 answer it if you can.  
 14 A So I'd like to clarify something. I  
 15 disagree with you in your point that it doesn't  
 16 include operate, because it does include that in the  
 17 sentence. It says, The Osage Tribe has indicated  
 18 that it will assert TradeWinds Energy -- has  
 19 asserted to TradeWind Energy must receive a mining  
 20 permit from the Osage Minerals Council in order to  
 21 construct and -- and operate the wind farm. So  
 22 there is a "and" there, "and operate the wind farm,"  
 23 there's nothing done. So I don't understand why  
 24 you'd come back and suggest that that does not --  
 25 operate the wind farm is not in this paragraph when

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1 it clearly is.  
 2 Q (By Ms. Nagle) Okay. Duly noted. What  
 3 is your understanding of what is meant by the word,  
 4 excavation, in this paragraph?  
 5 MR. McCORMACK: Again, we object to the  
 6 form, foundation, but you can answer.  
 7 A I have my understanding of what excavation  
 8 is, and excavation is removal of material or -- you  
 9 know, standard definition is not capitalized, but  
 10 excavation is movement of rock in preparation for  
 11 construction or build a structure.  
 12 Q (By Ms. Nagle) And are you familiar with  
 13 the Tenth Circuit's opinion in this litigation?  
 14 A I'm somewhat familiar. It's been  
 15 explained to me.  
 16 Q Do you have --  
 17 A (Inaudible.)  
 18 Q I'm sorry, I interrupted you. What did  
 19 you say?  
 20 A I have not read it in full.  
 21 Q Are you aware that the Tenth Circuit has  
 22 concluded that defendants excavation on the Osage  
 23 Mineral Estate constitutes mining under the law?  
 24 A I --  
 25 MR. McCORMACK: Whoa, whoa, whoa. Object

<p>Page 94</p> <p>1 to the form of the question as calling for a legal                  2 conclusion. You can answer if you can, although I                  3 would advise you also, Mr. Price, that if you are                  4 required to answer that question based upon                  5 attorney/client communications that you may have                  6 received from us or other attorneys, you should be                  7 very mindful about that and not answer in a way that                  8 would violate the attorney/client privilege. Is                  9 that confusing enough for you?</p> <p>10 A It is. I'm not understanding what you are                  11 saying. So I wouldn't mind a break and have a                  12 discussion with you, Mr. McCormack.</p> <p>13 MR. McCORMACK: I can do it, which is if                  14 you -- if you have learned what you know about that                  15 Tenth Circuit case from speaking to your attorneys,                  16 you have no obligation to tell this lawyer that. If                  17 you've learned what you know from speaking to                  18 non-attorneys, you do have an obligation to tell                  19 this attorney that.</p> <p>20 A I can give you my understanding, my brief                  21 understanding. Is that appropriate or not                  22 appropriate?</p> <p>23 MR. McCORMACK: If it is not derived from                  24 attorney/client communications, then you can answer                  25 that question, but if it is, you should not, because</p>	<p>Page 95</p> <p>1 <b>Q Okay. Do you have an understanding</b>                  2 <b>sitting here today of -- as to whether or not</b>                  3 <b>defendants were required to get a permit for the</b>                  4 <b>mining they undertook on the Osage Mineral Estate?</b></p> <p>5 A I understood that the Tenth Circuit                  6 suggested that there was a requirement to get a                  7 permit, there was a decision made that it said for                  8 -- as I understood, for rock crushing.</p> <p>9 <b>Q And did you say you read the Tenth</b>                  10 <b>Circuit's opinion in this case?</b></p> <p>11 A I haven't.</p> <p>12 <b>Q Okay. All right. I know -- well, okay,</b>                  13 <b>let me just keep going with this memo.</b></p> <p>14 A Can you bring up the -- I guess I can't                  15 ask that.</p> <p>16 MR. McCORMACK: No.</p> <p>17 A Bring up the Tenth Circuit Court's -- I                  18 guess that's --</p> <p>19 MR. McCORMACK: I don't see any value in                  20 that, so let her do what she needs to do.</p> <p>21 A I understand. Sorry.</p> <p>22 <b>Q (By Ms. Nagle) I'm happy to show it to</b>                  23 <b>you, if you would like to see it, but I really -- I</b>                  24 <b>think you've answered my questions with regards to</b>                  25 <b>your understanding and knowledge of the Tenth</b></p>
<p>Page 95</p> <p>1 everybody understands it is a privilege, and we                  2 honor it in this country. So you have to make -- if                  3 you need to talk to me to make that call, I'm happy                  4 to have that discussion with you offline.</p> <p>5 <b>Q (By Ms. Nagle) So just to be clear, I'm</b>                  6 <b>not asking you about any conversations you've had</b>                  7 <b>with attorneys, but you have testified here today</b>                  8 <b>that in your opinion this was not mining and that</b>                  9 <b>there was not a need to get a permit from the Osage</b>                  10 <b>Nation. And so there is a Tenth Circuit case on</b>                  11 <b>point, and if you -- you either have an</b>                  12 <b>understanding of that or you don't. So, certainly,</b>                  13 <b>I'm not asking about any conversations you've had</b>                  14 <b>with your attorneys about the legal significance of</b>                  15 <b>that opinion, but do you have an understanding of</b>                  16 <b>what the Tenth Circuit decided in this case?</b></p> <p>17 A I haven't read the opinion, so I believe I                  18 have an understanding of what it says, but it was                  19 explained to me from a third party. Since I haven't                  20 read it, so I'm relying on what's been expressed to                  21 me, what it means.</p> <p>22 <b>Q Okay. When you say, third party, would</b>                  23 <b>the third party communications have been with your</b>                  24 <b>attorneys or non-attorneys?</b></p> <p>25 A With attorneys.</p>	<p>Page 97</p> <p>1 <b>Circuit's decision, so -- but if you feel --</b></p> <p>2 A Very well.</p> <p>3 <b>Q Yeah, but always happy to show you a</b>                  4 <b>document if need be. Okay. So if we look further</b>                  5 <b>down in this memo, it also says here, "TradeWinds</b>                  6 <b>does not dispute that the lease does not provide it</b>                  7 <b>with a right to conduct mining or other mineral</b>                  8 <b>extraction. TradeWinds, however, is not conducting</b>                  9 <b>mining to the extent any soil or other subsurface</b>                  10 <b>material is touched by TradeWinds, it is merely</b>                  11 <b>incidental to TradeWinds' construction of its</b>                  12 <b>approved wind farm." What is your understanding of</b>                  13 <b>what is meant here by the phrase "merely</b>                  14 <b>incidental"?</b></p> <p>15 MR. McCORMACK: Hold on. Object to the                  16 form of the question, foundation, but you can answer                  17 if you know the answer.</p> <p>18 A Well, when a subsurface is touched -- so                  19 when you are excavating, you are moving the                  20 material. It's incidental because you don't really                  21 plan on where the bucket goes. So you are moving                  22 soil for the construction of the project.</p> <p>23 Incidental, I would look at that as it's not a                  24 planned location other than the excavation site.</p> <p>25 <b>Q And based on your experience as vice</b></p>

<p>Page 98</p> <p>1 president of engineering and construction, would</p> <p>2 using a rock crusher or dynamite for blasting be</p> <p>3 merely incidental touching of the minerals?</p> <p>4 A I'm not sure.</p> <p>5 Q Fair enough. On pages 3 to 4 of this memo</p> <p>6 I see there's -- there's quite a few cases that are</p> <p>7 cited here in the memo. We have got the Supreme</p> <p>8 Court -- United States Supreme Court's decision in</p> <p>9 Watt v Western Nuclear on page 3. We've also got</p> <p>10 Rosette on page 4. Do you -- did you review any of</p> <p>11 these cases yourself when you reviewed a version of</p> <p>12 this memo?</p> <p>13 A I just glassed over it.</p> <p>14 Q Uh-huh. I note that the Watt v Western</p> <p>15 Nuclear case states here that -- at the top of page</p> <p>16 4 of the memo, "One of the overriding purposes of</p> <p>17 the Act," referring to the SRHA, which is the Stock</p> <p>18 Raising Homestead Act, "one of the overriding</p> <p>19 purposes of the Act was to permit settlers to</p> <p>20 establish and maintain successful homesteads. There</p> <p>21 is force to the argument that this purpose would be</p> <p>22 defeated if the owner of the surface estate were</p> <p>23 unable to use reserved minerals, even where such use</p> <p>24 was essential for stock raising and raising crops."</p> <p>25 Do you recall having any conversations with your</p>	<p>Page 100</p> <p>1 the decision -- this court's decision in Rosette</p> <p>2 means when it refers to commercial activity?</p> <p>3 A No.</p> <p>4 Q Okay. Do you have an understanding of</p> <p>5 whether or not the Osage Wind Farm was producing</p> <p>6 anything to sell commercially?</p> <p>7 A To sell commercially, they were selling</p> <p>8 electricity.</p> <p>9 Q Okay. And did you know in this time frame</p> <p>10 from 2013 to 2015 that the Osage Allotment Act</p> <p>11 separated the mineral estate and the -- from the</p> <p>12 surface estate within Osage County?</p> <p>13 A No.</p> <p>14 Q Okay.</p> <p>15 A Say that again, the question, if I</p> <p>16 understood it correct.</p> <p>17 Q Sure.</p> <p>18 A Because I didn't hear that there was -- so</p> <p>19 go ahead.</p> <p>20 Q Were you aware in this time frame from</p> <p>21 2013 to 2015 that the Osage Allotment Act separated</p> <p>22 the mineral estate from the surface estate in Osage</p> <p>23 County?</p> <p>24 A I'm not exactly sure what that means, but</p> <p>25 I was aware that the Osage had subsurface rights,</p>
<p>Page 99</p> <p>1 attorneys with regards to this legal opinion or any</p> <p>2 later versions about what the actual purpose of the</p> <p>3 Stock Raising Homestead Act was?</p> <p>4 A No.</p> <p>5 Q Okay. Do you recall having any</p> <p>6 discussions with your attorneys regarding this legal</p> <p>7 opinion or any other versions of it regarding what</p> <p>8 the purpose was behind Congress's Act in 1906 when</p> <p>9 Congress put the Osage Mineral Estate in trust?</p> <p>10 A No.</p> <p>11 Q Okay. Did you ever have any conversations</p> <p>12 with your attorneys regarding whether or not</p> <p>13 construction of a wind farm would be "essential for</p> <p>14 stock raising and raising crops"?</p> <p>15 A No.</p> <p>16 Q If we look at the block quote from</p> <p>17 Rosette, if we see here, it says, "While Rosette</p> <p>18 might be able to use the heated water from</p> <p>19 geothermal resources under its property for use in</p> <p>20 watering livestock or irrigating forage crops and</p> <p>21 remain within the patent, the commercial activity of</p> <p>22 heating greenhouses to produce roses for sale falls</p> <p>23 outside the patent." Did you ever have any</p> <p>24 conversations with your attorneys in relying on</p> <p>25 this -- on their legal opinions with regards to what</p>	<p>Page 101</p> <p>1 and -- but what I understood was that the oil and</p> <p>2 gas rights from that of the landowner on the</p> <p>3 surface, so there are some surface rights that</p> <p>4 belong to the Osage Tribe.</p> <p>5 Q Okay. If you look here at the bottom of</p> <p>6 page 4 of the memo it states, "The mineral rights</p> <p>7 reserved under the Stock Raising Homestead Act are</p> <p>8 done so in language similar to that of the Osage</p> <p>9 Allotment Act." Did you ever have any conversations</p> <p>10 with your attorneys regarding this legal analysis or</p> <p>11 the one in October of 2014 regarding the similarity</p> <p>12 in the language between the Stock Raising Homestead</p> <p>13 Act and the Osage Allotment Act?</p> <p>14 A No.</p> <p>15 Q Okay. Do you have any understanding -- do</p> <p>16 you have an understanding of why this language was</p> <p>17 included in this memo?</p> <p>18 A No.</p> <p>19 Q Okay. If you look a little bit further</p> <p>20 down here, it says at the bottom of page 4, "The</p> <p>21 cases interpreting and applying the Stock Raising</p> <p>22 Homestead Act, therefore, are persuasive with</p> <p>23 respect to the interpretation of the Osage Allotment</p> <p>24 Act, and the same holding should result." Do you</p> <p>25 have an understanding of why this language is</p>

<p style="text-align: right;">Page 102</p> <p>1 included in the memo?</p> <p>2 A No.</p> <p>3 Q Okay. On page 6 there are quotes here</p> <p>4 from a Fourth Circuit decision in Mullins v</p> <p>5 Clinchfield Coal Corporation, and it states,</p> <p>6 essentially, that, you know, "The reasonable</p> <p>7 exercise of surface or residual rights does not</p> <p>8 constitute a trespass, although the mineral owner is</p> <p>9 entitled to compensation based upon the value in</p> <p>10 situ of the coal displaced." Did you have any</p> <p>11 conversations with your attorneys regarding this</p> <p>12 memo or any future versions of it with regards to</p> <p>13 this language about, entitled to compensation based</p> <p>14 upon the value of what was taken?</p> <p>15 A No.</p> <p>16 Q Do you know -- to your knowledge to this</p> <p>17 day, has the Osage Minerals Council been compensated</p> <p>18 by Enel for the value of the minerals that Enel</p> <p>19 took?</p> <p>20 A I don't believe so.</p> <p>21 Q To this day has Enel taken any steps to</p> <p>22 obtain the lease that the Tenth Circuit stated</p> <p>23 Enel's required to obtain?</p> <p>24 MR. McCORMACK: Whoa, whoa, whoa. Object</p> <p>25 to the form of the question as assumes facts, but</p>	<p style="text-align: right;">Page 104</p> <p>1 MR. McCORMACK: Object, asked and</p> <p>2 answered, but you can answer it again.</p> <p>3 A Say again?</p> <p>4 Q (By Ms. Nagle) I'm just trying to</p> <p>5 ascertain whether or not you are aware of any</p> <p>6 actions that may or may not have been undertaken by</p> <p>7 Enel to obtain a lease following the Tenth Circuit's</p> <p>8 decision?</p> <p>9 A Obtain a lease or a permit?</p> <p>10 Q Either one from the Osage Minerals</p> <p>11 Council.</p> <p>12 A There was some discussion at the time of</p> <p>13 construction when we literally received this</p> <p>14 instruction. We approached and tried to have a</p> <p>15 discussion, a dialogue with the Osage Tribe and the</p> <p>16 Bureau of Indian Affairs to have some consideration.</p> <p>17 So we looked at it to see what exactly -- why do you</p> <p>18 think this is mining, and we responded to that. So</p> <p>19 there was an attempt to try to have some form of</p> <p>20 agreement, and it was not successful.</p> <p>21 Q Do you recall when that attempt was made?</p> <p>22 A October of 2014.</p> <p>23 Q Okay. In looking at this legal analysis</p> <p>24 here from October of 2013, what is your</p> <p>25 understanding of how this legal analysis impacted</p>
<p style="text-align: right;">Page 103</p> <p>1 you can answer it if you know the answer.</p> <p>2 A Yeah, I'm not sure. Subsequent activities</p> <p>3 after the construction of the project was built and</p> <p>4 any of the last things that happened in the last few</p> <p>5 years, at the time of the project are to be -- we</p> <p>6 didn't conclude that the activity we were doing was</p> <p>7 mining. So this judgment that you are referring to</p> <p>8 was done much later, so at the time we were under</p> <p>9 the clear understanding the activities we were doing</p> <p>10 was not mining.</p> <p>11 Q Are you aware of -- sorry. Go ahead.</p> <p>12 A So at the time of my involvement in the</p> <p>13 project, at no time were we mining.</p> <p>14 Q Okay. You continue to hold that belief</p> <p>15 today, that at no time you all were engaged in</p> <p>16 mining?</p> <p>17 A Well, I'm unclear what the Tenth Circuit's</p> <p>18 decision describes, because to me it's quite fuzzy,</p> <p>19 but -- at least the way it was explained to me, but,</p> <p>20 you know, there's been some judgment later in fact,</p> <p>21 but not at the time of the construction of the</p> <p>22 project.</p> <p>23 Q Okay. Are you aware of any actions that</p> <p>24 defendants have undertaken to obtain a lease for the</p> <p>25 mining the Tenth Circuit has claimed occurred?</p>	<p style="text-align: right;">Page 105</p> <p>1 the plans for construction of the Osage Wind farm?</p> <p>2 MR. McCORMACK: Object to the form of the</p> <p>3 question, foundation, but you can answer it.</p> <p>4 A Well, as I understand it, we weren't --</p> <p>5 because of sensitivities of this requirement, we</p> <p>6 weren't allowed to remove excavated materials from</p> <p>7 the project, or as we excavated materials, we</p> <p>8 weren't allowed to relocate them.</p> <p>9 Q (By Ms. Nagle) And what do you mean by</p> <p>10 relocate?</p> <p>11 A Well, remove them from site, use them for</p> <p>12 any other purpose, so we were to -- anything that we</p> <p>13 excavated, we had to put it right back.</p> <p>14 Q And was it your understanding at this time</p> <p>15 that it would have been -- well, scratch that. No,</p> <p>16 that's fine. All right.</p> <p>17 Let's move on to the next exhibit. All</p> <p>18 right. So this will be Exhibit 105, I believe.</p> <p>19 This is a document Bates stamped -- sorry, let me</p> <p>20 just go to the first page here -- Bates stamped</p> <p>21 Osage Wind-018680. At the top we have an email from</p> <p>22 you, Bill Price, to Maria -- and I'm probably going</p> <p>23 to mispronounce her name -- Galainena De Carlos,</p> <p>24 dated December 2nd, 2014, and the subject reads,</p> <p>25 Osage backfill.</p>

<p style="text-align: right;">Page 106</p> <p>1 (Exhibit 105 marked for identification.)</p> <p>2 <b>Q (By Ms. Nagle) Are you familiar with this</b></p> <p>3 <b>email exchange, Mr. Price?</b></p> <p>4 A I believe so, if you don't mind me quickly</p> <p>5 reading it.</p> <p>6 <b>Q Yes, yeah, please go ahead.</b></p> <p>7 A So this is December 2nd. Yes, I'm aware</p> <p>8 of it.</p> <p>9 <b>Q Okay. And I will note here that on the</b></p> <p>10 <b>second page there's an email from Giuseppe DiMarzio</b></p> <p>11 <b>where he writes, "Steve, as you may recall, the</b></p> <p>12 <b>contract with IEA has 27 special excavations</b></p> <p>13 <b>included in the price. In reality, the site</b></p> <p>14 <b>conditions found have shown more competent, not</b></p> <p>15 <b>rippable rocks, so we had to blast 55 beyond the</b></p> <p>16 <b>contract and rock crush 54 beyond the contract." Is</b></p> <p>17 <b>that -- does that -- is that what you remember</b></p> <p>18 <b>happening with regard to the rock blasting at this</b></p> <p>19 <b>time?</b></p> <p>20 A Yes.</p> <p>21 <b>Q Okay. Do you recall -- this email is</b></p> <p>22 <b>dated December -- sorry, Giuseppe's email is dated</b></p> <p>23 <b>November 28th, 2014. Do you recall when Enel</b></p> <p>24 <b>discovered that there would need to be blasting</b></p> <p>25 <b>based on the site conditions found, beyond the 27</b></p>	<p style="text-align: right;">Page 108</p> <p>1 question. An excavator is this machine that I</p> <p>2 described earlier, and it would not have the</p> <p>3 capability to normally break apart the rock as it's</p> <p>4 building the foundation or excavating the</p> <p>5 foundation. So, therefore, their blasting of</p> <p>6 this -- it's more structural, more competent</p> <p>7 rocks --</p> <p>8 <b>Q Okay.</b></p> <p>9 A -- that required some other special -- as</p> <p>10 they say here, special excavations.</p> <p>11 <b>Q And at this time when this -- these</b></p> <p>12 <b>additional excavations were required and it was</b></p> <p>13 <b>discovered that they were not rippable rocks, was</b></p> <p>14 <b>that information provided to your attorneys at</b></p> <p>15 <b>Modrall Sperling?</b></p> <p>16 A I don't know to the extent of how many,</p> <p>17 but the fact that the project was doing some</p> <p>18 blasting was -- my understanding was provided. The</p> <p>19 explanation of the activities that I referenced</p> <p>20 earlier that -- as we referred to, the definition of</p> <p>21 facts, what was occurring at the site, discussion of</p> <p>22 blasting was included. To the extent of blasting,</p> <p>23 because we weren't completed yet, was not.</p> <p>24 <b>Q Okay. At any point in time did anyone</b></p> <p>25 <b>from Enel ask Modrall Sperling to update their legal</b></p>
<p style="text-align: right;">Page 107</p> <p>1 <b>wind turbine sites?</b></p> <p>2 A Well, this was done in October or</p> <p>3 November, because that's when it was completed by.</p> <p>4 <b>Q Okay. Who is Steven Lajoie?</b></p> <p>5 A I believe he had -- Steven Lajoie. I</p> <p>6 think it's -- Steven Lajoie was a procurement</p> <p>7 representative, so we were -- that's my</p> <p>8 recollection, so we were looking at the commercial</p> <p>9 aspect, because when we were looking at a change</p> <p>10 order, you also can get procurement involved to</p> <p>11 negotiate costs. So Steven Lajoie was -- from my</p> <p>12 recollection, was a procurement representative.</p> <p>13 <b>Q Okay. And what do you understand to be</b></p> <p>14 <b>meant by the phrase Giuseppe used here, "rippable</b></p> <p>15 <b>rocks"?</b></p> <p>16 A So what he represented is we -- the</p> <p>17 contractor, IEA, had attempted to go to the</p> <p>18 foundation, and they attempted to use the means that</p> <p>19 were specified in the contract to excavate the</p> <p>20 foundations. And the contractor made some decisions</p> <p>21 that the standard method that was contained in the</p> <p>22 contract was -- in their version was not rippable</p> <p>23 rock. So in other words, an excavator couldn't</p> <p>24 break through -- a bucket, you can imagine an</p> <p>25 excavator -- do you know what a -- I'm asking you a</p>	<p style="text-align: right;">Page 109</p> <p>1 <b>analysis based on the additional blasting that was</b></p> <p>2 <b>taking place?</b></p> <p>3 A I'm not aware nor I expect it would have</p> <p>4 any merit, because if you are blasting 27</p> <p>5 foundations or 55 more foundations, you are still</p> <p>6 blasting, so it would have been covered in the</p> <p>7 original assessment.</p> <p>8 <b>Q Okay. Let's see, looking at our next</b></p> <p>9 <b>exhibit, so this document I am showing you now will</b></p> <p>10 <b>be marked as Exhibit 106, and it is a document Bates</b></p> <p>11 <b>stamped Osage Wind-018808.</b></p> <p>12 (Exhibit 106 marked for identification.)</p> <p>13 <b>Q (By Ms. Nagle) At the very top is an</b></p> <p>14 <b>email from you, Bill Price, to Bill Moskaluk, dated</b></p> <p>15 <b>December 3rd, 2014, subject matter, Osage backfill.</b></p> <p>16 <b>It looks like it's a forward of -- it's a different</b></p> <p>17 <b>version or an updated version of the email chain we</b></p> <p>18 <b>were looking at earlier, and it now has this</b></p> <p>19 <b>December 2nd response from you as well. Are you</b></p> <p>20 <b>familiar with this email?</b></p> <p>21 A Yes.</p> <p>22 <b>Q Who is Maria here that you are writing to?</b></p> <p>23 A She's the head of engineering, wind</p> <p>24 engineering.</p> <p>25 <b>Q Okay.</b></p>

<p>Page 110</p> <p>1 A Or she could have been the head of civil, 2 so she was -- she was either civil engineering or 3 head of wind. She's done both -- both positions, so 4 I don't know what she was at this time. 5 <b>Q Would she have been with EGPNA?</b> 6 A Yes, she was an engineering reference. 7 <b>Q Who is Salvatore Sciuto?</b> 8 A Sciuto, Salvatore Sciuto. He was the 9 overall head of engineering. So Maria reported to 10 Salvatore Sciuto. Both of these employees are in 11 Italy. 12 <b>Q Okay. Was Salvatore also employed by</b> 13 <b>EGPNA?</b> 14 A Yes. 15 <b>Q Okay. You write here in this sentence,</b> 16 <b>"Overall, the reality is the report and its</b> 17 <b>conclusions did not represent the actual conditions</b> 18 <b>observed at the site." What report are you</b> 19 <b>referring to?</b> 20 A There's an engineering report that the 21 engineering team did, actually at my request, 22 because of -- to understand why the contractor had 23 made some assertions that more -- that the site 24 conditions required blasting. And we were -- and 25 from my perspective, as the head of construction in</p>	<p>Page 112</p> <p>1 commercial aspect of IEA. IEA represented the rock 2 was harder than perhaps it was, because it achieved 3 a commercial benefit of such. So the report is very 4 clear that if you look at the rippability of the 5 rock, as described before, that it should have been 6 able to be -- gone through a standard excavation 7 unless blasting should have occurred. 8 So once we received the report, which, of 9 course, was after the fact, then we -- you know, 10 then as you see here, that IEA had represented 11 something different, it became clear that it was a 12 commercial -- it was a commercial consideration of 13 that by IEA to blast the rock if -- what IEA -- IEA 14 had two considerations from a commercial 15 perspective. One is they had -- they had the 16 opportunity to earn more of a fee in a change order, 17 because anything over 27 they could get additional 18 fees; secondly, they -- if they excavated the 19 foundations through standard means due to an 20 excavator or hydraulic or pneumatic type tools to 21 break apart the rock, it would have taken more time 22 and more labor expense, and, therefore, more cost to 23 the contractor. So it was more of a simpler 24 commercial decision of the excavation contractor to 25 represent that it's harder than actual, so,</p>
<p>Page 111</p> <p>1 managing costs, we have a site assessment or 2 geotechnical report that suggested a lesser number 3 of foundations needed more working than what the 4 contractor found, so the contractor had -- because 5 they are entitled to a change order, the contractor 6 had made some representations that the rock, 7 subsurface conditions were harder; therefore, it 8 must have required the additional special handling, 9 which meant a change order, additional fee. 10 So I was asking our engineering team, how 11 could we be so wrong from 27 to these 84 12 foundations. So I was questioning why we didn't 13 pick it up so I can utilize -- so I can assess 14 why -- how to address this with the contractor 15 through a change order. 16 <b>Q In undertaking this exercise, did you ever</b> 17 <b>find out what the cause of this discrepancy was</b> 18 <b>between the actual conditions in the report?</b> 19 A Well, once I got the report, clearly the 20 report shows that that -- in most cases there was 21 some additional, but even less than 27. The report 22 shows that the rock should have been able to be -- 23 gone through a standard excavation process, it just 24 would have took more time to do it. So the report 25 demonstrated that it was -- clearly, it was a</p>	<p>Page 113</p> <p>1 therefore, it was a necessity to blast. 2 <b>Q I see. You also write here in this email,</b> 3 <b>"However, the contractual agreement clearly</b> 4 <b>identifies the subsoil situation and the price in</b> 5 <b>which it was based upon." What contractual</b> 6 <b>agreement are you referring to?</b> 7 A The agreement between the project and IEA 8 that we referred to earlier that comes -- 9 <b>Q Okay.</b> 10 A -- to 27 foundations. 11 <b>Q Okay. So you also write here, "The site</b> 12 <b>team determined that 81 of the 84 foundations needed</b> 13 <b>blasting. Further, there are many other factors,</b> 14 <b>such as the disputed mining activity and associated</b> 15 <b>mineral rights with the Osage Nation, which lead us</b> 16 <b>into making the necessary decisions to move forward</b> 17 <b>with the project." So do you recall exactly when</b> 18 <b>the number jumped from 27 wind turbines that we</b> 19 <b>looked at before that needed blasting to 81?</b> 20 A Well, it was October or November, so we 21 started -- excavation started in September, and we 22 finished end of November, something like this. 23 <b>Q Okay. Do you know if anyone at Enel ever</b> 24 <b>asked Modrall Sperling to update their legal</b> 25 <b>analysis, based on the fact that there would be</b></p>

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1 **blasting at 81 of the 84 foundations?**

2 MR. McCORMACK: Objection, asked and

3 answered. You can answer it again.

4 A Okay. Yeah, it's really irrelevant. At

5 the time the report was generated or asked, we

6 described the activities that was going on, so

7 whether you're -- if mining was in 27 foundations or

8 84 foundations, it would have been assessed in the

9 report or the document.

10 **Q (By Ms. Nagle) So it's true that Enel did**

11 **not request an update to the legal memo after**

12 **October 2014; is that correct?**

13 A Yes.

14 **Q Okay. With regards to where you say,**

15 **"into making the necessary decisions to move forward**

16 **with the project," what did you mean by "necessary**

17 **decisions"?**

18 A At the time what we were trying to do is

19 assess how to continue with the project. So we

20 were -- when we did this -- the interesting fact is

21 if we -- if you excavated the project, if you are

22 able to break apart the rock, then maybe this

23 rock -- less rock crushing would have been

24 necessary. So because of this -- if you excavated a

25 foundation and you chipped it away, then the size of

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1 the rock that would have been removed from the

2 foundation would be much less size, so an excavator

3 would have ripped the rock.

4 So if you had -- since we blasted it -- or

5 we blasted more than actually necessary, as it turns

6 out from the engineering report, because of a

7 commercial benefit to the contractor, the rocks

8 coming out of the foundation were larger. They

9 weren't broken in pieces. So, therefore, for us to

10 use them for fill required additional work to those

11 rocks, which was crushing. So because of the

12 additional blasting, led to more crushing, that the

13 report -- the engineering report shows that it was

14 actually unnecessary to do. So if we had stuck to

15 it and required the contractor to use

16 extraordinary and continue in its excavation and

17 other methods, the engineering report shows that it

18 should have been able to be broken apart through

19 other forms other than blasting.

20 **Q In terms of the other -- many other**

21 **factors that you are referring to here, you write,**

22 **"Such as the disputed mining activity and associated**

23 **mineral rights with the Osage Nation." How did that**

24 **factor into the decision-making process at this**

25 **time?**

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1 A Well, again, I don't recall exactly the

2 exact activity. I think about at the time, but a

3 little bit clearer, is when we excavated, as I

4 explained earlier, if by doing this rock crushing,

5 which was the concern of the parties. So while we

6 suggest the rock crushing wasn't mining, it was a

7 disputed fact that the rock crushing may have been

8 considered mining. So if we never had to do it in

9 the first place, then you wouldn't have a dispute.

10 So if we were able to excavate the foundations,

11 which the engineering report shows that we could

12 have excavated, you know, 60, 70 of the foundations

13 without doing this blasting, then this disputed

14 activity would have been just a few -- few

15 foundations.

16 **Q Okay. I am going to take that exhibit**

17 **down. Okay. So the next exhibit -- so I think we**

18 **are on -- I believe we are on Exhibit 107. So this**

19 **will be Exhibit 107. It is Bates stamped Osage Wind**

20 **PRIV-000577, and this looks to be an updated version**

21 **of Exhibit 36. This one is dated May 19th, 2014.**

22 **It's to Steve Willman at TradeWind Energy from Lynn**

23 **Slade, Bill Scott and Sarah Stevenson.**

24 (Exhibit 107 marked for identification.)

25 **Q (By Ms. Nagle) Are you familiar with this**

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1 **memo, Mr. Price?**

2 A Yes.

3 **Q Would you have read this May 19th, 2014,**

4 **version?**

5 A Yes.

6 **Q Do you have an understanding of why**

7 **Mr. Willman needed an updated version of this memo**

8 **on May 19th, 2014?**

9 A I understood it to be to get clarity

10 from -- as it says, to -- you know, "whether the

11 surface owner who excavates land for the purpose of

12 constructing consistent with its surface rights, and

13 it does not remove the land excavated from the

14 property, is engaged in mining." So it's an

15 assessment. It's a request to -- just as the

16 question presented.

17 **Q Do you have an understanding of why**

18 **changes were made between the October 2013 version**

19 **and this May 2014 version?**

20 A No.

21 **Q Okay. Were there -- do you have an**

22 **understanding of whether there were any inadequacies**

23 **that needed to be addressed in the May 2013 version**

24 **that were addressed in this version?**

25 A No.

<p style="text-align: right;">Page 118</p> <p>1 MR. McCORMACK: Whoa, whoa, whoa, whoa,</p> <p>2 whoa. Object to the form of the question, asked and</p> <p>3 answered, but I think you just answered it again, so</p> <p>4 go ahead.</p> <p>5 <b>Q (By Ms. Nagle) Do you know if any changes</b></p> <p>6 <b>were made to Enel's construction plans for the Osage</b></p> <p>7 <b>Wind Farm based on the assessments made in this</b></p> <p>8 <b>May 2014 version of the memo?</b></p> <p>9 A Yeah, I think it changes technical</p> <p>10 specifications to -- to not remove the rock</p> <p>11 foundations -- or not remove the rocks excavated</p> <p>12 from the foundations, to not -- to put it back in as</p> <p>13 fill.</p> <p>14 <b>Q Okay. If we look at the page ending in</b></p> <p>15 <b>Bates 578 here, we still have this language about</b></p> <p>16 <b>the "Osage Tribe has indicated that it will assert,"</b></p> <p>17 <b>that seems to be the same as we saw before. Let's</b></p> <p>18 <b>see, so I see here -- this paragraph right here,</b></p> <p>19 <b>this sentence, "TradeWinds' construction of the wind</b></p> <p>20 <b>farm, as we understand its plans, will not require a</b></p> <p>21 <b>permit from the BIA or the Osage Nation." What is</b></p> <p>22 <b>your understanding of what is meant by this language</b></p> <p>23 <b>here, "as we understand its plans"?</b></p> <p>24 A Well, as we understand how the project was</p> <p>25 going to be constructed.</p>	<p style="text-align: right;">Page 120</p> <p>1 how we were going to execute the project. In this</p> <p>2 case, it said TradeWinds, but Enel was riding</p> <p>3 parallel or working on the execution, preparing for</p> <p>4 the execution of the project on the behalf of</p> <p>5 TradeWinds until Enel actually acquired the project</p> <p>6 from TradeWinds.</p> <p>7 So when we had the issue with the -- or</p> <p>8 the question with the Bureau of Indian Affairs about</p> <p>9 mining, a lot of these documents became more</p> <p>10 available to us to assess, you know, what's the --</p> <p>11 what is the reason why this -- we were getting this</p> <p>12 letter from the BIA, and we understood that there's</p> <p>13 no mining -- there's hidden -- hidden requirement,</p> <p>14 so my response is to go back to others with</p> <p>15 TradeWinds and our permit team and said, you know,</p> <p>16 what is this about. So -- and that's when I started</p> <p>17 reading more in detail these documents. So prior to</p> <p>18 May -- prior to this particular document and the</p> <p>19 documents in 2013, I wasn't involved with that.</p> <p>20 <b>Q (By Ms. Nagle) Okay. And I see that the</b></p> <p>21 <b>phrase, "it would -- to the extent any soil or other</b></p> <p>22 <b>subsurface material would be moved by TradeWind, it</b></p> <p>23 <b>would be merely incidental to TradeWinds'</b></p> <p>24 <b>construction of its approved wind farm." I see that</b></p> <p>25 <b>language is still in this version. Then I also note</b></p>
<p style="text-align: right;">Page 119</p> <p>1 <b>Q Did you have an understanding at this time</b></p> <p>2 <b>that your attorneys at Modrall Sperling were relying</b></p> <p>3 <b>on folks at Enel to give them updated information</b></p> <p>4 <b>about the plans for construction?</b></p> <p>5 MR. McCORMACK: Object to the form of the</p> <p>6 question. Whoa, whoa, whoa. Object to the form</p> <p>7 of -- object to the form of the question,</p> <p>8 foundation, but you can answer it.</p> <p>9 A Can you rephrase, because I'm trying to</p> <p>10 understand what you are asking me because I -- okay.</p> <p>11 Go ahead.</p> <p>12 <b>Q (By Ms. Nagle) Did you have an</b></p> <p>13 <b>understanding at this time in May of 2014 that the</b></p> <p>14 <b>attorneys at Modrall Sperling were relying on folks</b></p> <p>15 <b>at Enel for updated information about the</b></p> <p>16 <b>construction plans for the Osage Wind Farm?</b></p> <p>17 MR. McCORMACK: Object to the form of the</p> <p>18 question, foundation, but you can answer.</p> <p>19 A This particular document, while I read it,</p> <p>20 it was after the May. I don't recall reading it</p> <p>21 before. Our engineering team may have read it. I</p> <p>22 was not as aware of the sensitivities with this</p> <p>23 permit until September, and then I, you know, read</p> <p>24 all of these documents. So there was an assessment</p> <p>25 made in May that added how we were going to do --</p>	<p style="text-align: right;">Page 121</p> <p>1 <b>that if we look at page ending in Bates stamp 581,</b></p> <p>2 <b>that we still see a discussion of Rosette -- sorry,</b></p> <p>3 <b>let me find -- there's discussion of Rosette here.</b></p> <p>4 <b>And do you have an understanding of why the Rosette</b></p> <p>5 <b>case was included in this memo?</b></p> <p>6 MR. McCORMACK: Wait. Object to the form</p> <p>7 of the question, compound, but you can answer it.</p> <p>8 A Sorry, I'm answering too fast. No, I</p> <p>9 wasn't involved in this document or its preparation</p> <p>10 until after the fact. So I believe all the</p> <p>11 questions you asked me about this document, at least</p> <p>12 these type of comparisons, the answer would be no.</p> <p>13 <b>Q (By Ms. Nagle) Okay. And further on</b></p> <p>14 <b>down, this memo states, on page 5, "The reservation</b></p> <p>15 <b>of the mineral rights reserved under the Stock</b></p> <p>16 <b>Raising Homestead Act is similar to that of the</b></p> <p>17 <b>Osage Allotment Act." Do you have an understanding</b></p> <p>18 <b>of why this phrase was included in this memo?</b></p> <p>19 MR. McCORMACK: Objection, foundation.</p> <p>20 You can answer it, if you know the answer.</p> <p>21 A No.</p> <p>22 <b>Q (By Ms. Nagle) In the first paragraph on</b></p> <p>23 <b>page 582, the authors of this memo write, "The</b></p> <p>24 <b>surface owner may use the mineral estate</b></p> <p>25 <b>incidentally, but it may not use it for commercial</b></p>

<p>Page 122</p> <p>1 extraction of minerals or other related purposes."</p> <p>2 Did you have any conversations with your attorneys</p> <p>3 at Modrall Sperling about what "other related</p> <p>4 purposes" could mean in this context?</p> <p>5 A No.</p> <p>6 Q Okay. The page ending in 583, I see here</p> <p>7 that we still have the citation to Mullins and</p> <p>8 Saddle Mountain. Do you have an understanding of</p> <p>9 why these two cases were included in this memo?</p> <p>10 A No.</p> <p>11 MR. McCORMACK: Object to the form of the</p> <p>12 question, foundation. You can answer, if you know</p> <p>13 the answer.</p> <p>14 A Sorry. No.</p> <p>15 Q (By Ms. Nagle) Okay. Did defendants rely</p> <p>16 on this particular memo from May 2014 to determine</p> <p>17 that a mining permit from the Osage Nation was not</p> <p>18 necessary?</p> <p>19 A Say again?</p> <p>20 Q Did Enel rely on this legal memo from Lynn</p> <p>21 Slade, Bill Scott and Sarah Stevenson in May of 2014</p> <p>22 to determine that a mining permit from the Osage</p> <p>23 Nation was not necessary?</p> <p>24 A Yes.</p> <p>25 Q Okay. And is it your understanding that</p>	<p>Page 124</p> <p>1 utilize soil.</p> <p>2 (Exhibit 108 marked for identification.)</p> <p>3 Q (By Ms. Nagle) Do you know why</p> <p>4 Mr. Willman would have needed an updated or new</p> <p>5 version of this memo in August of 2014?</p> <p>6 A No.</p> <p>7 Q Do you know -- have you reviewed this</p> <p>8 version of the memo?</p> <p>9 A Yes.</p> <p>10 Q Do you know if any changes were made to</p> <p>11 Enel's construction plans as a result of the</p> <p>12 revisions made to this memo?</p> <p>13 A No.</p> <p>14 Q Were there any changes made --</p> <p>15 A I --</p> <p>16 Q I'm sorry, go ahead.</p> <p>17 A Let me make it clear. When I said no,</p> <p>18 means no changes were made, not that I wasn't aware.</p> <p>19 Q Okay. Thank you.</p> <p>20 A So no changes were made to the execution</p> <p>21 on behalf -- so we believed that we still -- we</p> <p>22 didn't adopt any new changes based on this memo.</p> <p>23 Q Okay. Thank you. Were any changes</p> <p>24 made -- oh, sorry. So I do note that in this</p> <p>25 question presented there's new language that was not</p>
<p>Page 123</p> <p>1 this detailed legal analysis was contingent upon a</p> <p>2 backfill versus aggregate distinction?</p> <p>3 MR. McCORMACK: Object to the form of the</p> <p>4 question, confusing, but if you understand the</p> <p>5 question, you can answer.</p> <p>6 A I understood it to be that the -- that the</p> <p>7 mining was extraction of minerals and then being</p> <p>8 used for a different purpose, for commercial use,</p> <p>9 being used for -- I mean, being spread out on roads,</p> <p>10 being removed from sites and being, say, disposed</p> <p>11 of, but if we removed -- my understanding was that</p> <p>12 if we removed the rock and we had to crush the rock</p> <p>13 for it to be used as backfill, we're basically</p> <p>14 putting it back in the hole just in a form that</p> <p>15 allowed compaction for structural support for the</p> <p>16 foundation, that that was allowed and it was not</p> <p>17 considered mining.</p> <p>18 Q Okay. I'm going to move on to the next</p> <p>19 exhibit, which this will be Exhibit 108, and it is</p> <p>20 Bates stamped Osage Wind PRIV-000446. And I will</p> <p>21 note that it is an August 25th, 2014, version of</p> <p>22 this memo to Steven C. Willman from TradeWind Energy</p> <p>23 from Lynn Slade, Bill Scott and Sarah Stevenson,</p> <p>24 subject matter, rights of surface owners or their</p> <p>25 lessees in Osage County, Oklahoma, to excavate or</p>	<p>Page 125</p> <p>1 in any of the previous versions, and -- where it</p> <p>2 refers to here, it says, "whether a surface owner</p> <p>3 who excavates soil and related materials from land</p> <p>4 for the purpose of construction consistent with its</p> <p>5 surface rights, and does not remove the materials</p> <p>6 excavated from the property, subject to a mineral</p> <p>7 reservation." Do you have an understanding of why</p> <p>8 the phrase, "property subject to a mineral</p> <p>9 reservation" was added to this version of the memo?</p> <p>10 MR. McCORMACK: Wait. Objection, form of</p> <p>11 the question. Object to the form of the question,</p> <p>12 foundation, but you can answer the question.</p> <p>13 A I do not.</p> <p>14 Q (By Ms. Nagle) Okay. Do you know what is</p> <p>15 meant by the phrase, "property subject to a mineral</p> <p>16 reservation"?</p> <p>17 MR. McCORMACK: Same objection.</p> <p>18 A Well, I would -- to me what it means is</p> <p>19 that subject to some type of mineral, as you say,</p> <p>20 reservation or permit or some acknowledgment to have</p> <p>21 permission or -- for that mineral.</p> <p>22 Q (By Ms. Nagle) Okay. Looking through</p> <p>23 this version of the memo, I note that there's no</p> <p>24 language referring to the fact that the Osage Tribe</p> <p>25 has indicated that a permit is necessary. That</p>

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1 language, of course, was in the May 2014 and the

2 October 2013 versions. Do you have an understanding

3 of why that language was deleted?

4 A No.

5 Q Okay. I note we still have Watt v.

6 Western Nuclear cited here on page 3. It looks like

7 Rosette is still cited here on page 4. Do you have

8 an understanding of why Rosette was still included

9 in this version of the memo?

10 A No.

11 Q Okay. I see here on page 5, we still have

12 this language, "The reservation of the mineral

13 rights reserved under the SRHA is similar to that of

14 the Osage Allotment Act." Do you have an

15 understanding as to why this language was included

16 in the memo?

17 A No.

18 Q At the bottom of this paragraph -- same

19 paragraph it says, "The cases interpreting and

20 applying the Stock Raising Homestead Act, therefore,

21 should be persuasive with respect to the

22 interpretation of the Osage Allotment Act, and the

23 same holding should result." Do you have an

24 understanding of why this language was included in

25 the memo?

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1 A No.

2 Q Did the defendants rely on this version of

3 the memo to determine that obtaining a mining permit

4 from the Osage Nation was not necessary?

5 A Yes.

6 Q Okay. Moving along, I'm going to show an

7 exhibit that has previously been entered as Exhibit

8 81. And let's see here, this is a document that's

9 not Bates stamped, it's not in the production, but

10 it was attached by defendants to their response to

11 the United States' motion for preliminary injunction

12 back on December 10th, 2014, but if you look down

13 here, there's a cover email from Lynn Slade to Robin

14 Phillips.

15 (Exhibit 81 previous marked for

16 identification.)

17 Q (By Ms. Nagle) Do you know who Robin

18 Phillips is?

19 A Well, it says here BIA. So Bureau of

20 Indian Affairs.

21 Q Okay.

22 A Do I recall who this person is? Not

23 directly.

24 Q Okay. Do you know who Alan Woodcock is?

25 A I recall, but I don't exactly recall his

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1 duty or responsibility. I recall the name, but...

2 Q Okay.

3 A So my answer is no.

4 Q Okay. Here it looks like Lynn Slade is

5 sharing, he says, "We believe you should be apprised

6 of the information contained in the October 17,

7 2014, memorandum to Mr. Alan Woodcock in the

8 Regional Solicitor's Office attached." And if we

9 scroll down here, we see that it is, in fact,

10 attached as a part of this exhibit the defendants

11 submitted in the federal court in December of 2014.

12 This version is dated October 20th, 2014, to Alan

13 Woodcock from Lynn Slade and William Scott. Did

14 you -- are you familiar with this version of the

15 memo?

16 A Yes.

17 Q Was this version shared with anyone at

18 Enel?

19 A Yes.

20 Q And do you recall anyone at Enel asking

21 the attorneys at Modrall Sperling why they made

22 changes in this version from the previous versions?

23 A I don't know why anybody asked other than

24 to -- to define more precisely the activities that

25 was going on with the project. There seemed to be

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1 some gray area from the Bureau of Indian Affairs,

2 and I believe that this -- the intention here was to

3 more -- it's more detailed in its response, because

4 we were trying -- we as Enel was trying to assess

5 whether this mining permit was required or not.

6 Q Do you recall any discussion -- or do you

7 have an understanding as to why the previous

8 versions of this memo were not shared with Alan

9 Woodcock?

10 A I would have no idea whether they were

11 shared or not.

12 Q Okay. Was there anyone at Enel who was

13 responsible for ensuring that when Modrall Sperling

14 sent this October 2014 version to Alan Woodcock that

15 it had the most accurate understanding of the facts

16 contemporaneous to October 2014?

17 A I'm not sure. So ask again, the question.

18 So I understand, it was someone -- was someone

19 within Enel responsible to get this to Mr. Woodcock?

20 Q Was there anyone at Enel responsible for

21 ensuring that the facts that Modrall Sperling put

22 into this legal memorandum and then shared with Alan

23 Woodcock were correct and accurate and up-to-date as

24 of October 2014?

25 A That would be either -- would anybody from

<p>Page 130</p> <p>1 Enel assess this, would anybody assess the legal 2 opinion, is that how I -- if I can rephrase your 3 question? 4 <b>Q So the question is whether or not anyone 5 at Enel would have fact checked it. Was it anyone's 6 job at Enel to assess whether the facts used in this 7 memo were accurate or not?</b> 8 A So fact -- which part of the memo? I 9 mean, the memo has consistent to what activities are 10 going on, so what particular facts? 11 <b>Q Well, let's see, we can certainly go 12 through here and -- factual background. So, I mean, 13 each of these is a fact, right? Osage Wind, an 14 indirect, wholly-owned subsidiary of EGPNA. I mean, 15 I don't think -- holds leases of non-Indian owned 16 fee estate, I don't think anyone is going to dispute 17 that, but is there -- I mean, that's a fact.</b> 18 <b>And my question is -- and there's numerous 19 facts here, the excavations for the turbine 20 foundations are the largest excavations and measure 21 approximately 10 feet deep and between 50 and 22 60 feet in diameter. My assumption, I could be 23 wrong, is that Modrall Sperling didn't -- weren't 24 experts at turbine excavation foundation creation 25 and that they relied on Enel for these facts that</b></p> <p>Page 131</p> <p>1 <b>they put in this memo, but if I'm wrong I'd love to 2 know that. So really my question is just, was there 3 someone at Enel whose job it was or whose 4 responsibility it was to ensure that these facts in 5 this memo are accurate?</b> 6 A Can you scroll through the rest of the 7 memo? 8 <b>Q Sure.</b> 9 A So these particular facts are correct, 10 yes. We provided this information on actual 11 activities. The background on the Osage Mineral 12 Estate, I believe we've covered that in great 13 detail, but I don't know. So the factual aspects of 14 the -- so some parts of this document, the answer is 15 yes, and some parts of the document, no. 16 <b>Q Okay.</b> 17 A When it comes to these -- the historical 18 legal cases, I'm not sure who checked them, but as 19 far as the factual background and what was actually 20 done at the site, yes. 21 <b>Q Okay. And you said "we" when you were 22 referring to who --</b> 23 A Enel. 24 <b>Q -- provided the facts for factual 25 background. Would that -- you, would that have been</b></p>	<p>Page 132</p> <p>1 <b>you?</b> 2 A I certainly recall this language, so at 3 one time I reviewed whether it was actually in this 4 document or a subsequent document that was cut and 5 paste into this document. I'll -- verifying that 6 this was actual activity that was actually 7 describing the activities that's begun on site. 8 <b>Q Okay. And so if we look up here a little 9 bit further, if we're looking at this first page and 10 the second page, nowhere do I see anything in the 11 factual background or the first two pages that 12 refers to the touching of the soil materials as 13 merely incidental, which is language we looked at in 14 previous versions of this memo. Do you have an 15 understanding of why the merely incidental language 16 was deleted from this October 2014 version of the 17 memo?</b> 18 A No. I think it's clear what the intent 19 here was, to try to more accurately -- when you say, 20 incidentally touching, it's perhaps not a clarified 21 term, so let's clarify exactly what was going down, 22 what was happening at the site, and this document 23 more properly reflects what was being done so that 24 it can be -- so everybody is clear on the activities 25 so we can get a -- you know, this assessment.</p> <p>Page 133</p> <p>1 <b>Q Okay. Do you have an understanding of who 2 removed the merely incidental language from the 3 memo?</b> 4 A I don't. 5 <b>Q Okay. It also looks like some new 6 language was added to this memo that was not in any 7 of the previous versions. For instance, it says 8 here, "Although there have been repeated efforts by 9 the Osage Nation to prevent implementation of the 10 project, the issue regarding the sandy soil mining 11 permit may also reflect a misunderstanding of Osage 12 Wind's activities or the applicable law." Do you 13 know who added this language to the memo?</b> 14 A No. 15 <b>Q What is your understanding of who had the 16 misunderstanding of Osage Wind's activities?</b> 17 A Well, I think the -- when we received the 18 message and what activities we were doing at site, 19 even the BIA initial letter had some mis- -- had 20 some inaccuracies in it that need to be clarified 21 and activities that were going on and clarities of 22 whether it was considered mining or not. 23 <b>Q Okay. What information were the BIA or 24 the Osage Nation lacking at that time in terms of 25 understanding Osage Wind's activities?</b></p>
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1 MR. McCORMACK: Object to the form of the  
2 question, confusing, speculative, but if you know  
3 the answer, you can answer.  
4 A Well, we -- of what exactly was happening  
5 at the site when it first was mining, so it seemed  
6 that the Bureau of Indian Affairs, when they wrote  
7 their letter, they had some inaccuracies, such as  
8 the size, and there's exaggerated language. There  
9 was a pit that was 30 feet deep; so there's nowhere  
10 in the project that there's a pit that's 30 feet  
11 deep. So it gives the appearance from the Bureau of  
12 Indian Affairs that they were trying to exaggerate  
13 the actual activities that was going on for other  
14 purposes. So the letter says 30 feet, nowhere is  
15 there 30 feet. Why would they put such -- so this  
16 type of misunderstanding from the BIA. So why would  
17 they put that in the document, so that that's --  
18 that was, you know, a clear misunderstanding and  
19 then how that -- so when people -- when others read  
20 this information, it would give you -- if you had  
21 the viewpoint that a pit that existed 30 feet,  
22 that's a pretty large excavation, and that perhaps  
23 you could come to the conclusion that maybe some  
24 mining activity could happen with such a large  
25 excavation, but this didn't occur. So people were

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1 making up -- making their minds up based on false  
2 information.  
3 Q Okay. If we look at this -- let's see,  
4 I'm going, scrolling down here to the case law  
5 that's mentioned, and I see here we're talking about  
6 different statutes, and I see here mention of Watt v  
7 Western Nuclear on page 4, but scrolling down to  
8 page 5, I don't see any mention of the Rosette  
9 decision, which has been in all the previous drafts  
10 of the memo that we've looked at until now. Do you  
11 have an understanding of why the citation to Rosette  
12 was deleted from this version of the memo?  
13 A No.  
14 Q Do you know who deleted it?  
15 A No.  
16 Q Okay. Likewise, if we scroll down to page  
17 7, I see there's some additional authorities here,  
18 but there's no discussion -- there's discussion of  
19 Saddle Mountain, but no discussion of Mullins, which  
20 was that Fourth Circuit case about compensation that  
21 we looked at earlier, that's in the previous  
22 versions of the draft. Do you know who decided to  
23 remove the citation to Mullins?  
24 A No.  
25 Q Okay. If you look on page 5, we have this

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1 language here, "The reservation of the mineral  
2 rights reserves under the SRHA is similar to that of  
3 the Osage Allotment Act," which is language we've  
4 seen in all the other versions, but then it says,  
5 "Although the contemplated surface uses under the  
6 SRHA are perhaps narrower than the general grant of  
7 surface rights for patentees under the Osage  
8 Allotment Act." Do you have an understanding about  
9 why this qualification here was added in this  
10 October 2014 version of the memo?  
11 A No.  
12 Q Do you know if legal research was  
13 performed to reach this conclusion here made in this  
14 last part of the sentence?  
15 A Legal research?  
16 Q Yeah.  
17 A No. We relied on the entity that provided  
18 the document. Legal research seems to refer to the  
19 -- in these points, so legal research --  
20 Q Okay.  
21 A -- I don't think that that's what's  
22 contained in this document, so -- and we're getting  
23 a specific legal opinion, so...  
24 Q Okay. So who at Osage Wind, EGPNA or Enel  
25 Kansas relied on this memo to determine that a

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1 mining permit from the Osage Nation was not  
2 necessary?  
3 A I don't know. Enel was the executer of  
4 the project, and so Enel relied on this.  
5 Q Okay. Was there --  
6 A If --  
7 Q I'm sorry. Go ahead.  
8 A If there are other entities, it's  
9 immaterial at this point, because we were the  
10 responsible party and the owner of the project and  
11 building it.  
12 Q Was there ever a time when you were  
13 uncertain, you, yourself personally, as to whether  
14 or not a permit or lease from the Osage Nation would  
15 be required?  
16 A Yes.  
17 Q And when was that time period?  
18 A When we -- when we received this letter  
19 from the BIA that said, hey, stop mining. We were  
20 not mining, so we took a pause. So why would a  
21 representative come on site and suggest we were  
22 doing something we weren't, so we took a pause and  
23 we asked, is this considered mining? And this  
24 additional document that you see was a result of  
25 others that questioned why are we receiving this

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1 letter from the BIA to stop mining. So we -- so at  
 2 that time we revisited some of these, and that's  
 3 where I see a lot of this old background, the  
 4 history of the challenges associated with this  
 5 mining permit, whether it was required or not, and  
 6 then the subsequent conclusions made that the  
 7 activity we were doing is not mining, so we  
 8 continued to excavate the project accordingly.  
 9 **Q Okay. I'm now going to introduce Exhibit**  
 10 **109.**  
 11 MR. McCORMACK: Do you mind actually if we  
 12 take our next break? It's been an hour and a half.  
 13 MS. NAGLE: Sure. I am fine with that.  
 14 How long do we need for a break?  
 15 MR. McCORMACK: Come back at 8:45.  
 16 MS. NAGLE: I'm fine with that. Does that  
 17 work for the United States?  
 18 MS. McCLANAHAN: Yes, ma'am.  
 19 MS. NAGLE: Okay. Great. Let's go off  
 20 the record.  
 21 MR. McCORMACK: Thanks so much.  
 22 THE VIDEOGRAPHER: We are off the record  
 23 at 8:28 central time.  
 24 (A recess was had.)  
 25 THE VIDEOGRAPHER: We are back on the

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1 record at 8:47 a.m. central time.  
 2 **Q (By Ms. Nagle) Okay. Thanks so much. So**  
 3 **I am going to try to wrap up my questioning in this**  
 4 **next session so that the United States has some time**  
 5 **to ask some questions as well. So thank you so much**  
 6 **for bearing with me through all of this.**  
 7 **I'd like to now just ask some general**  
 8 **questions about some of the terminology that relates**  
 9 **to excavation and mining and construction of wind**  
 10 **farms. So what exactly is a borrow pit?**  
 11 A Typically, a borrow pit could be like a  
 12 pit used for material, like a quarry.  
 13 **Q Okay.**  
 14 A So if you need material such that there's  
 15 nothing there, that you could get it from that pit.  
 16 **Q Okay. And how do you create a borrow pit?**  
 17 A Usually, it's just that. You identify --  
 18 in the quarry you identify the rights to that, you  
 19 get in some discussions with whoever owns that,  
 20 whether it's a lease, there's some identified quarry  
 21 pits where you get material, some landowners have  
 22 access to material, and you can get material from  
 23 soil or rock or other aggregate from -- through  
 24 those type of negotiations or agreements to acquire  
 25 that material. So you get it by digging it.

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1 **Q Right. Okay. Is it typical to use a**  
 2 **borrow pit on a wind farm construction site?**  
 3 A It's typical to bring in -- yeah, to have  
 4 a quarry or bring in fill material, yes.  
 5 **Q Okay. And what exactly is aggregate?**  
 6 A Aggregate is rock.  
 7 **Q Okay.**  
 8 A It's usually defined to a certain size,  
 9 rock -- irregular rock piece.  
 10 **Q Okay. How is that distinguished from**  
 11 **backfill?**  
 12 A Backfill includes other -- you know,  
 13 aggregate is just like rock-rock, backfill is a  
 14 combination of material.  
 15 **Q Okay. And where does backfill come from**  
 16 **usually?**  
 17 A Usually it comes from the turbine  
 18 foundation that you remove --  
 19 **Q Okay.**  
 20 A -- in most all cases.  
 21 **Q Okay. And what does it mean to balance a**  
 22 **construction site?**  
 23 A I would like to see this worded in context  
 24 of a sentence, but I think if you are balancing a  
 25 construction site, and we're looking at it from a

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1 perspective of material, it would be moving material  
 2 from one place to another as necessary needs to  
 3 shore up, so where that rock would go. So that  
 4 would be just as a term refers to it as a balancing,  
 5 equalizing, moving more on site to the other where  
 6 it's needed.  
 7 **Q Okay. Great. And when you first started**  
 8 **working on the Osage Wind Farm project, do you**  
 9 **recall what the plans were specifically for sourcing**  
 10 **the backfill that would be used for the Osage Wind**  
 11 **Farm?**  
 12 A The backfill was the turbines themselves,  
 13 which, again, is almost -- all turbines, the  
 14 backfill comes from excavated rock.  
 15 **Q Okay.**  
 16 A The only challenge with this particular  
 17 project, it had, you know, hard rock.  
 18 **Q Sure.**  
 19 A Almost always, because it's -- you have  
 20 to -- the commercial requirement is to bring in  
 21 rock, it really doesn't make sense, so you take the  
 22 material you excavate, and you sift it and use it  
 23 for backfill.  
 24 **Q Okay. I'd like to show you an exhibit**  
 25 **that's previously been entered in this litigation as**

<p>Page 142</p> <p>1 <b>Exhibit 8, and it's a document Bates stamped Osage</b>  2 <b>Wind PRIV-000089, and it looks to be a May 15th,</b>  3 <b>2014, email from Joan Heredia to Daren Daters, and</b>  4 <b>subject matter says, Osage use of soil materials.</b>  5 (Exhibit 8 previously marked for  6 identification.)  7 <b>Q (By Ms. Nagle) Have you seen this</b>  8 <b>document?</b>  9 A Yes.  10 <b>Q Ms. Heredia writes, "It is very important</b>  11 <b>that we not remove any soil from the project site or</b>  12 <b>use site materials in lieu of materials we would</b>  13 <b>typically buy off site in developing a wind project.</b>  14 <b>Osage Nation has mineral rights for the project</b>  15 <b>lands, and removal of soil, especially for</b>  16 <b>commercial gain, could constitute mining." Looking</b>  17 <b>back at these sentences that Ms. Heredia wrote, does</b>  18 <b>her understanding of what is permissible without a</b>  19 <b>permit and what is not permissible without a permit,</b>  20 <b>is that correct based on your understanding?</b>  21 A From back in 2014, yes.  22 <b>Q Okay. And when Ms. Heredia writes this,</b>  23 <b>is that -- is her understanding of that based on her</b>  24 <b>reliance on the detailed legal analysis that Modrall</b>  25 <b>Sperling undertook?</b></p>	<p>Page 144</p> <p>1 understand, so misunder -- misprint there. So the  2 answer is make sure it's broadly announced or it's  3 part of our contract that we have with our  4 contractors and it's included in our technical  5 specifications.  6 <b>Q Okay. I'm going to stop looking at that</b>  7 <b>document, and I'm now going to pull up a document</b>  8 <b>that's previously been entered as Exhibit 68 in this</b>  9 <b>litigation, and let me just share my screen. So</b>  10 <b>this is Exhibit 68, and it's a document Bates</b>  11 <b>stamped Osage Wind PRIV-000165. At the top there's</b>  12 <b>an email to you from Steve Champagne, dated</b>  13 <b>September 30th, 2014.</b>  14 (Exhibit 68 previously marked for  15 identification.)  16 <b>Q (By Ms. Nagle) Have you seen this email</b>  17 <b>exchange before?</b>  18 A I believe so. It looks familiar, yeah.  19 Can you scroll down?  20 <b>Q Yes.</b>  21 A Okay.  22 <b>Q If you look just below here, this email</b>  23 <b>from Giuseppe DiMarzio, dated September 30th, 2014,</b>  24 <b>he writes -- he lists an agenda here, and he writes,</b>  25 <b>"Do we need a rock crushing permit with the Mineral</b></p>
<p>Page 143</p> <p>1 A I'm not sure how she came to the  2 conclusion, but Joan Heredia is the head of  3 permitting or regulatory compliance, so her  4 responsibility is to ensure we have all adequate  5 permits, and if there's any sensitivities to certain  6 permits or aspects of executing the project, she's  7 to inform or make the project team aware of the  8 sensitivities and that's simply what she's doing  9 here.  10 <b>Q Okay. It states here, "Please make sure</b>  11 <b>this is announced broadly to all subcontractors."</b>  12 <b>Do you know what processes Enel had in place to make</b>  13 <b>sure that that announcement would go to all</b>  14 <b>subcontractors?</b>  15 A Yes. It's part of our technical  16 specifications.  17 <b>Q Was there an individual whose job it was</b>  18 <b>primarily to communicate this to subcontractors?</b>  19 A Well, to subcontractors, it would be the  20 responsibility of the contractor, so I think  21 she's -- she's -- should have -- it's probably a  22 typo there -- she should make sure this announces  23 broadly to all contractors. The contractors is who  24 we have agreements with. Subcontractors are  25 contractors, sub of our main contractor, if you</p>	<p>Page 145</p> <p>1 <b>Council for backfill of foundations? 2. If so, can</b>  2 <b>we get it? 3. If not, we should prepare anyway the</b>  3 <b>strategy for the response. 4. Who in EGP is going</b>  4 <b>to call the BOI?" So is it true that at this point</b>  5 <b>in time, as of September 30th, that defendants, Enel</b>  6 <b>specifically, was still considering whether or not</b>  7 <b>it would need to get a rock crushing permit from the</b>  8 <b>Osage Minerals Council?</b>  9 A Well, again, let's -- let's clarify what  10 this says. So what we received is a -- this  11 document from the Bureau of Indian Affairs, as I  12 recall it, and it had on there that we needed to --  13 because of the rock crushing, we needed to get a  14 mining permit. So when we -- we were -- we  15 established the project, we as Enel, through all of  16 these various different correspondence we've  17 addressed here, said that our activity wasn't  18 mining.  19 So in the BIA letter to us it referenced  20 rock crushing. So none of these documents that  21 we've discussed or had some activities talk about  22 the actual activity of rock crushing, so we wanted  23 to say, hey, look, this rock crushing, is it mining,  24 and so --  25 <b>Q Okay.</b></p>

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1 A -- so we took a pause, and -- you know,  
 2 when we get a letter or such, we want to understand,  
 3 you know, what it meant. So that's -- so the first  
 4 agenda -- here we got this letter, you know. Do we  
 5 have a situation here? If we do need this permit,  
 6 this is the -- then it's to head to Joan. So Joan  
 7 is the head of environmental, our regulatory  
 8 affairs, Daren was assigned to the project, and then  
 9 you have some business development guys, myself,  
 10 Bill Moskaluk is the site, Steve Champagne is the  
 11 legal, Aaron, I believe, was TradeWinds' permitting  
 12 person, but Lincon is the -- is business  
 13 development, so -- then it says, "if so, can we get  
 14 it?" I'm looking at the bullet points again. If  
 15 not, we should prepare the strategy for the  
 16 response, and who in EGP is going to call the -- I  
 17 think that's probably BIA, Bureau of Indian Affairs,  
 18 BIA.  
 19 Q Yeah, yeah.  
 20 A So -- okay?  
 21 Q Okay. Okay. Thank you. Then Joan  
 22 responds here to Giuseppe's email on September 29th,  
 23 2014, and she writes, "Giuseppe, we need to act with  
 24 an abundance of caution. We should not be using  
 25 materials at the site that would be otherwise

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1 commercially available. I understand backfill -- I  
 2 understood backfill would come from an off-site  
 3 quarry." Is Ms. Heredia's understanding of the  
 4 plans for the sourcing of the backfill correct?  
 5 A No, it was not correct.  
 6 Q Do you have any idea why she had this  
 7 misunderstanding?  
 8 A I'm not Joan Heredia, I don't know why. I  
 9 do know that we do a lot of projects. We were doing  
 10 a lot of projects at the same time. Some projects  
 11 you would -- you could use material for backfill.  
 12 If you had a sandy -- like sand situation, where the  
 13 sand wasn't a good source for structural support,  
 14 you could use -- you might have to use off-site  
 15 material, but in this particular project, the  
 16 foundation, the material there was certainly  
 17 suitable for backfill.  
 18 Q Was Ms. Heredia's statement here in this  
 19 email based on her review of Modrall Sperling's  
 20 legal analysis provided to Enel?  
 21 MR. McCORMACK: Hold on, hold on. Object  
 22 to the form of the question, foundation, but you can  
 23 answer it if you know.  
 24 A I wouldn't know what was in Joan's mind.  
 25 I mean, this is on the 29th of September, so it

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1 was -- you know, from a historical perspective, it  
 2 wasn't -- from the various documents we had, it  
 3 wasn't certainly the last one. Joan was involved  
 4 with the permits, and she had access to some of this  
 5 correspondence that took place earlier, so -- so I  
 6 think that in this particular case she's just, hey,  
 7 let's look at this, and it was, we got this thing  
 8 from BIA, so we all said -- we all said, hey, let's  
 9 pause, let's take a look at this. We got this  
 10 letter, and, you know, are we doing something wrong,  
 11 which was prudent to do. So I think that her  
 12 message here is, you know, if she -- whether she had  
 13 this misunderstanding or not, she said, hey, look,  
 14 let's take a pause so we all get on the same page,  
 15 and that's what took place.  
 16 Q Okay. If you look above here, Aaron  
 17 Weigel responds on September 29th stating, "It is my  
 18 understanding that the rock crushing is not a  
 19 commercial use." Did you have the same  
 20 understanding as Mr. Weigel, that rock crushing was  
 21 not a commercial use?  
 22 A Yes.  
 23 Q Did you ever have any conversations with  
 24 any of the Modrall Sperling attorneys regarding what  
 25 would constitute a commercial use of the minerals

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1 taken from the mineral estate?  
 2 A Direct discussions, no.  
 3 Q Okay. Is your understanding in line with  
 4 Mr. Weigel's here that rock crushing is not a  
 5 commercial use, is that based on the detailed legal  
 6 analysis that Modrall Sperling undertook?  
 7 MR. McCORMACK: Object to form,  
 8 foundation. You can answer it if you know.  
 9 A I don't know, but I -- you know, rock  
 10 crushing, there's no commercial value of rock  
 11 crushing. In fact, it's almost the other way  
 12 around. It costs you money to crush rock, so you  
 13 don't get any value. There's no commercial value  
 14 for crushing the rock.  
 15 Q (By Ms. Nagle) And Aaron Weigel also  
 16 writes here, "Instead, it is a symptom of simply  
 17 having rocks too big to neatly put back into the  
 18 holes from which they came." Is that -- in your  
 19 view, is that a correct understanding of why rock  
 20 crushing was necessary?  
 21 A Yes.  
 22 Q Okay. If we move up to your email from  
 23 September 30th, you state here -- let me see, right  
 24 here at the top, "Because of the more than expected  
 25 hard rock that we are encountering with the

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1 foundations excavations, we are having to blast more  
2 than expected." Is it correct that you ended up  
3 having to blast more at the construction site than  
4 you initially expected?

5 A Yes. You've asked that before, and I've  
6 answered it already.

7 Q Okay. Let's see here, you write, "The  
8 large rocks removed from the excavation works is  
9 being crushed and reused for backfill. This is  
10 normal, as we do not want to dispose of the large  
11 excavated rocks. Possibly would then be considered  
12 mining and cannot use large rocks for backfill."  
13 What did you mean by "possibly would then be  
14 considered mining"?

15 A Well, we have to dispose of the rocks, and  
16 usually -- then you're actually removing the rocks,  
17 you are putting them somewhere else, they are being  
18 used for another purpose than -- especially if  
19 there's a commercial fact -- than -- yeah, we --  
20 then we didn't want any -- from the advice we had,  
21 is if we didn't remove them and we could excavate  
22 and put them right back where they were, then it  
23 wasn't mining, so we didn't want to take any risk to  
24 give anybody some consternation of -- that this rock  
25 was being used for another purpose than going back

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1 in the hole in which it came.

2 Q And so is this statement here a statement  
3 you are making in reliance on the detailed legal  
4 analysis that your attorneys performed?

5 A At the time and at the time of this  
6 message, the subsequent memo wasn't written, so  
7 we -- I was in fact finding, so at this time is when  
8 I was reviewing all the various, previous  
9 correspondence, the correspondence that was sent in  
10 2013 and 2014, getting more familiar with the  
11 different activities in more detail. So we -- so  
12 that's why we said, let's pause for a minute, and  
13 let's -- because we can. We don't have to do rock  
14 crushing. So let's pause until we have a clear  
15 understanding if there's something that we're doing  
16 inappropriately. So the detailed legal analysis  
17 was -- especially the one that was done in October  
18 or November was -- came later.

19 Q Okay. And you say here, "Cannot use large  
20 rocks for backfill." Why was it that you were  
21 unable to use the large rocks for backfill?

22 A Well, they don't provide structural  
23 support. So rocks -- large back -- large rocks, you  
24 can't compress them. So when you -- so you have  
25 to -- when we crush them, you make them to a size,

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1 and then you compact the soil on top of the  
2 foundation, and it provides some structural strength  
3 per the engineering design. So when we -- when  
4 you -- if it was just big rocks, it's not  
5 compressible per se for the, you know, proper  
6 backfill compaction.

7 Q Okay. You also write here, "This is  
8 causing additional time, and we are slipping on  
9 foundation schedule. Thus, this is not a good time  
10 to stop excavation works unless we absolutely have  
11 to." What did you mean by "absolutely have to"?

12 A Well, we're in a construction schedule, so  
13 things are -- so in a construction schedule, things  
14 are very in sync. So equipment was already ordered,  
15 equipment was going to arrive. There's a certain  
16 execution of the project that it's a big master  
17 plan, so if we stop the excavation works, it creates  
18 a huge domino effect in the construction of the  
19 projects. In this case, you know, the excavation  
20 works was not the issue. What the issue was was the  
21 rock crushing, so we didn't have to stop the  
22 excavation, so what we just did is we piled -- we  
23 continued with the excavations, and then we crushed  
24 the rock once we had some clarity on whether we  
25 could do it or not without this permit, so the

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1 excavation work continued.

2 Q So is it true that after receiving -- or  
3 after this visit from the BIA in late September that  
4 Enel stopped crushing rock temporarily at the  
5 construction site?

6 A Yes.

7 Q For how long --

8 A (Inaudible.)

9 Q For how long did you stop?

10 A I'm not, you know, exactly sure. I  
11 would -- approximately a couple of weeks, something  
12 like this, but we did stop for a period of time for  
13 us to take a breather to see if this was something  
14 that was -- to understand what the situation was.  
15 So we did stop crushing rock, we did, yeah, but,  
16 again, the excavation works to building -- doing the  
17 pits continued, because --

18 Q Uh-huh.

19 A -- that wasn't under dispute.

20 Q And who made the decision at Enel to pause  
21 on the rock crushing?

22 A Well, primarily I did, but also supported  
23 by the executive team.

24 Q And would the executive team include  
25 Francesco Venturini?

<p>Page 154</p> <p>1 A Yes.</p> <p>2 <b>Q Okay. Who made the decision to resume</b></p> <p>3 <b>rock crushing?</b></p> <p>4 A Same -- the same executive team, primarily</p> <p>5 supported by me, and it was my recommendation to</p> <p>6 continue and -- based on the information we had.</p> <p>7 <b>Q Okay. And at that time did you ask the</b></p> <p>8 <b>attorneys at Modrall Sperling to specifically</b></p> <p>9 <b>analyze whether rock crushing would constitute</b></p> <p>10 <b>mining?</b></p> <p>11 A I believe so, yes. That's part of the --</p> <p>12 that's part of the description of activities.</p> <p>13 <b>Q Okay. And you state here, "We are</b></p> <p>14 <b>expecting to be a week delayed on GE, WTG</b></p> <p>15 <b>deliveries, and any further stoppages will...." You</b></p> <p>16 <b>get the picture. What did you mean by -- well,</b></p> <p>17 <b>actually let me back up. At that point why were you</b></p> <p>18 <b>expecting to be a full week delayed?</b></p> <p>19 A Well, what we did -- what that meant, this</p> <p>20 bullet point, it goes in a little bit more detail,</p> <p>21 but what happens is when wind turbines are</p> <p>22 delivered -- so they come in sections. You have</p> <p>23 power sections, you have the Nacelle, you have</p> <p>24 blades, you have different components that come to</p> <p>25 the site. So you don't want to -- there's very</p>	<p>Page 155</p> <p>1 <b>able to complete that?</b></p> <p>2 A There's a few things you can do. You can</p> <p>3 put them on standby which then you incur what they</p> <p>4 refer to as demurrage cost, where you -- the trucks</p> <p>5 just hold onto them for a while, and then you start</p> <p>6 incurring these large fees. You can tell the</p> <p>7 manufacturer to slow down in delivery, which is not</p> <p>8 a good thing, because then these components go</p> <p>9 somewhere else. There's also the challenge that you</p> <p>10 have a crane or equipment and manpower to install</p> <p>11 these, so if you delay that, that equipment and</p> <p>12 manpower is assigned to somebody else.</p> <p>13 So you have a certain window to execute</p> <p>14 the installation of this equipment. If you miss</p> <p>15 that window, that equipment and that crew might go</p> <p>16 somewhere else and -- or it's been allocated</p> <p>17 somewhere else. This is at a time of -- of a</p> <p>18 project where you had this -- production tax</p> <p>19 credits, concerns for the production tax credits</p> <p>20 were going to expire; therefore, there was a lot of</p> <p>21 demand for equipment to assemble wind turbine</p> <p>22 projects, and that includes cranes and construction</p> <p>23 material and resources. So if we didn't meet</p> <p>24 schedule, those resources went to another project,</p> <p>25 and then we took a huge risk of not being able to</p>
<p>Page 155</p> <p>1 limited areas of storage, of actually stacking these</p> <p>2 components on site. There's no place to put them,</p> <p>3 so the components are going to come on site, and the</p> <p>4 intention is we have equipment available, cranes,</p> <p>5 components, so that these tower sections, the first</p> <p>6 sections to arrive are to be installed. So if we</p> <p>7 delay the foundations -- we can excavate the</p> <p>8 foundations, we can actually pour the mud mats,</p> <p>9 which is a cement base, we can do the -- erect the</p> <p>10 foundation, which is the rebar and the cement</p> <p>11 foundation, but you can't install the tower sections</p> <p>12 until the units are backfilled, and the backfill</p> <p>13 required a competent fill material to do, which is</p> <p>14 where the rock crushing came in.</p> <p>15 So there's a natural delay that we could</p> <p>16 have experienced with the rock crushing, but then --</p> <p>17 because we could do other activities, but when these</p> <p>18 components come, and most of these foundations are</p> <p>19 available, there's no way to install these tower</p> <p>20 sections as they are being delivered in consecutive</p> <p>21 points, so if -- so what it would do is it would be</p> <p>22 equivalent to backing up traffic on a freeway.</p> <p>23 <b>Q Okay. And if you don't have the storage</b></p> <p>24 <b>on site, would you have to, like, send them back, or</b></p> <p>25 <b>what would happen if they arrived before you were</b></p>	<p>Page 157</p> <p>1 complete and execute the project on time. I see.</p> <p>2 Okay. I'm going to stop with this exhibit, and I'm</p> <p>3 now going to bring up Exhibit 38, which has been</p> <p>4 previously -- a document that's previously been</p> <p>5 entered as Exhibit 38 in this litigation. I'll</p> <p>6 share my screen. So this is a document Bates</p> <p>7 stamped Osage Wind PRIV-000243, and it's an</p> <p>8 October 9th, 2014, letter from Superintendent Robin</p> <p>9 Phillips of the BIA to Francesco Venturini.</p> <p>10 (Exhibit 38 previously marked for</p> <p>11 identification.)</p> <p>12 <b>Q (By Ms. Nagle) Are you familiar with this</b></p> <p>13 <b>document, Mr. Price?</b></p> <p>14 A Yes.</p> <p>15 <b>Q If you read here, it says, "You are to</b></p> <p>16 <b>refrain from any further excavation of minerals</b></p> <p>17 <b>until such time that you have obtained a sandy soil</b></p> <p>18 <b>permit through the Osage Agency." After receiving</b></p> <p>19 <b>this letter, was excavation of the minerals halted</b></p> <p>20 <b>at the Osage Wind Farm project?</b></p> <p>21 A Again, we took a little pause, but then we</p> <p>22 continued with the excavations.</p> <p>23 <b>Q And is it true that that pause, as you</b></p> <p>24 <b>mentioned before, only involved a pause on rock</b></p> <p>25 <b>crushing, but not on the actual excavation itself?</b></p>

<p>Page 158</p> <p>1 A We paused some of the excavation for a 2 shorter period of time than we did rock crushing, so 3 the excavations -- because I believe there was -- 4 there was additional discussions between Joan and 5 the BIA and the concerns they had, and the concern 6 was rock crushing. So there was additional 7 discussion, and the permit was involved, primarily 8 around the crushing. That was the concern. 9 So, you know, how things evolved, it 10 wasn't so much -- the excavation was always expected 11 to occur. What the concern was -- is the -- is this 12 had been crushed into small rocks and piled around 13 the turbine foundation, was the concern. So that's 14 why we made the decision, you know, this is -- the 15 excavation was always a normal aspect of the project 16 execution, it was in the special use permit, 17 everybody knew that this was what we were going to 18 do. The Osage Tribe knew that excavation was 19 required. 20 This rock crushing was now into question, 21 and, again, I point out here that this -- we got 22 this letter inadvertently, so we -- so although it 23 says this is October 9th, we received it, you know, 24 from secondhand. So I recall that, and that created 25 some problems, because we didn't get it directly.</p>	<p>Page 160</p> <p>1 A Don't worry about it. 2 Q Thank you. From you, dated October 20th, 3 2014. 4 (Exhibit 109 marked for identification.) 5 Q (By Ms. Nagle) Are you familiar with this 6 email? 7 A Yes. 8 Q Who is Vittorio, whose name I cannot 9 pronounce, Vagliasindi? 10 A Vagliasindi. 11 Q Yeah. 12 A He's the head of engineering construction, 13 who I referenced at the beginning of this 14 deposition. 15 Q Okay. Who is Luca Rossini? 16 A Luca Rossini was the head of construction 17 at the time. 18 Q Okay. At -- 19 A Luca Rossini was the head of engineering. 20 Q At EPGNA or at Enel? Okay. 21 A Luigi Lapegna was the head of project 22 management. 23 Q Okay. And who is Magrini Umberto? 24 A Umberto Magrini is -- was the head of 25 engineering.</p>
<p>Page 159</p> <p>1 So there seemed to be some sensationalism with the 2 letter, that it was being used for an alternative 3 fact, because it didn't go to us, it went to 4 somebody else, or it was posted before we received 5 it. And then, as I mentioned, I recall, because I 6 was not really thrilled because Mr. Whiteshield, 7 this inspector, found a pit approximately 60 foot 8 wide and 30 feet deep. There's no pit, there's no 9 foundation that's 30 feet deep, so it's a gross 10 exaggeration. And this leads people, if they read 11 this, to say, 30 foot deep, my goodness, maybe 12 there's mining activity going on. 13 So this activity, because it was 30 foot 14 deep, this misinformation put a lot of people on 15 notice, like, well, what the heck is Enel doing 16 there. So that's why we took a pause and went and 17 said, okay, let's try to get some clarification here 18 on what the concern is. 19 Q Okay. Okay. Thank you for that. Let's 20 see, just a little bit more here. I'd like to 21 introduce another exhibit. Okay. So I believe this 22 will be Exhibit 109. Let me share my screen. So 23 this is a document Bates stamped Osage Wind-019010. 24 And it is an email to Vittori Vagliasindi. I'm 25 totally mispronouncing --</p>	<p>Page 161</p> <p>1 Q Also for Enel? 2 A Head of engineering -- he was the head of 3 engineering, yeah. And then -- yeah, right now he's 4 the head of -- again, these individuals change, so 5 Vittorio retires, and then these positions back in 6 2013, they -- you know, people get promoted and move 7 around. 8 Q Uh-huh. 9 A So excuse me if I get -- what their job 10 positions were in 2013 and 2014, 2015 would have 11 transitioned. 12 Q Sure. Sure. So under engineering and 13 construction you write, "It seems the primary 14 concern is associated with the rock crushing." What 15 made you say that? 16 A Because that was the basis of the 17 correspondence we had with the BIA, Joan's 18 discussion. The excavation was always a defined 19 activity the project was going to undergo. So where 20 the concern was, was that -- again, our special use 21 permit, all these things defined the excavation and 22 all the activities that we're doing. So we -- there 23 seemed to be some concern that, you know, why were 24 we crushing rock. To me it's -- when you are 25 excavating, you build in a road, you are doing any</p>

<p>Page 162</p> <p>1 type of construction activity, you are crushing 2 rock, so it's -- 3 <b>Q Uh-huh.</b> 4 A You know, I'm perplexed by some of the 5 decisions that were made by the Tenth Circuit, but, 6 regardless, you know, crushing rock is in some form, 7 when you grade a road you could crush rock, so 8 that -- but actually we had rock crushing machines, 9 and that was the concern. When you are doing 10 excavation material, when you are digging a hole, 11 you crush rock, right, so construction practice you 12 crush rock. So the concern was that we thought, 13 okay, this is what the -- what people are being 14 worried about, so maybe it's a form of education and 15 clarity, so that's what we were trying to do. 16 <b>Q Okay. You also write, "If this is a 17 long-term stoppage, we can then bring in other 18 material for backfill. This will add cost to the 19 project, but we think it can be managed." Did Enel 20 ever decide to bring in other material for backfill?</b> 21 A No. We decided not to do that. 22 <b>Q Why was that decision made?</b> 23 A Primarily because the activity that we 24 were doing, there's a cost impact, and because the 25 advice from legal -- from our legal consultants that</p>	<p>Page 164</p> <p>1 considered by Rule 30 that there will be these kinds 2 of interruptions to questioning of the witness. 3 MR. McCORMACK: Well, just let me say for 4 the record, I'm not sure what you are talking about. 5 We haven't interfered in this examination at all. I 6 am 5,000 miles from my witness, and I've had two -- 7 one, two -- conversations with my client during the 8 deposition. I don't find that out of the ordinary 9 at all. So I disagree entirely with your idea that 10 we're interfering in any way. We've been extremely 11 professional with you. I think you've been 12 professional with me. But I don't think that having 13 a sidebar with my client after a question ends is 14 inappropriate in any way, especially when he's 15 5,000 miles away and I've done it twice. So I 16 disagree entirely with any suggestion that we're 17 doing anything inappropriate here. 18 MS. NAGLE: I just -- I don't think we -- 19 go ahead, Kathy. 20 MS. McCLANAHAN: I'm sorry. This is Kathy 21 McClanahan with the United States Attorney's Office. 22 I've simply never witnessed anything like it in 27 23 years of practicing law. It is, at least in this 24 district, and I'm sure you became familiar with our 25 case law and our rules when you were admitted pro</p>
<p>Page 163</p> <p>1 the activity of crushing and our activity wasn't 2 considered mining, so why would we incur another 3 cost for this. 4 THE WITNESS: Can we take a quick pause 5 for a second? 6 MS. NAGLE: Sure. How long of a break do 7 we need? 8 THE WITNESS: Just a minute. I have -- 9 you know, I'm getting a call from counsel. 10 MS. NAGLE: Okay. 11 THE VIDEOGRAPHER: We are off the record 12 at 9:21 a.m. central. 13 (A recess was had.) 14 THE VIDEOGRAPHER: We are back on the 15 record at 9:23 a.m. central time. 16 MS. NAGLE: Okay. So I will just state 17 for the record that we're having a lot of 18 interruptions and coaching of the witness, so I'm 19 not sure what the basis for this last call was, but 20 it's happened numerous times now, so I would just 21 ask counsel going forward that if you do have an 22 issue, if it's based on privilege or whatever it is, 23 that you make it clear for the record and that you 24 actually permit the questioning of the witness 25 without interruption. It's not usual or certainly</p>	<p>Page 165</p> <p>1 hac vice, it is not allowed. After the witness is 2 sworn in, we are entitled to a candid discussion 3 between the questioner and the witness, and there 4 are cases out there that, if you care to look, in 5 the Northern District where magistrates have said 6 that this kind of -- you called them whispering into 7 your client's ear. That's expressly forbidden. So 8 I just make my record that I will be prepared to 9 call Judge Jayne. I hate to bother her at 9:30 in 10 the morning, but I will do that if we continue to 11 have these interruptions. 12 MR. McCORMACK: I could not disagree with 13 you more. I'm not doing anything wrong, and I'd be 14 very curious to see if when we're taking the 15 examination of your witnesses you think you are not 16 allowed to speak to your client at any time during 17 the deposition. I would find that quite surprising, 18 but let's not -- 19 MS. McCLANAHAN: Please do -- please do 20 take a note of that, because -- 21 MR. McCORMACK: Let's not waste any 22 further time on this. Can we just get back to the 23 job at hand? 24 <b>Q (By Ms. Nagle) Okay. So we were just 25 interrupted by a call that you got from your</b></p>

<p>Page 166</p> <p>1 counsel. I'm not sure what the nature of that call 2 was or the purpose that call, but before your 3 counsel took you away from this deposition, we were 4 discussing this document here, and at the bottom of 5 this email chain where you referred to, "If there is 6 a long-term stoppage, we can then bring in other 7 material for backfill. This will add cost to the 8 project, but we think it can be managed." 9 And so I believe you were discussing an 10 answer before, which I think is finished, so we'll 11 move on to the next question. And you say here on 12 the next page, "Best case scenario is the BIA 13 assesses the situation and determines our activities 14 are not mining and conclude the permit is not 15 applicable for the project." If that is the best 16 case scenario -- well, first of all, did that 17 happen? 18 A No. 19 Q So what was the alternative to your best 20 case scenario in event that the BIA did not agree 21 and determine and remain steadfast that your 22 activities did constitute mining? 23 A Well, we just had a -- we had a 24 disagreement. We couldn't get -- both parties 25 couldn't agree on the activities that we were doing</p>	<p>Page 168</p> <p>1 try to work with the parties to understand what the 2 objections are, alternatives. We didn't get this 3 clarity from the Bureau of Internal -- Indian 4 Affairs. 5 Q Would you say that you got the clarity you 6 needed from the Tenth Circuit's decision in this 7 case? 8 A I think that this is not -- not fair to 9 say, because this is well beyond, and at the time of 10 the project, this decision wasn't there. 11 Q If the decision had been there, would that 12 have been sufficient to convince you or anyone at 13 Enel that a mining permit is necessary? 14 MR. McCORMACK: Object to the form of the 15 question, calls for speculation, argumentative. You 16 can answer. 17 A As I represented earlier, I would have to 18 look at the Tenth Court's decision, but as I 19 understand it, it was a rock crushing activity. So 20 if we had a concern that rock crushing was the area 21 of concern and we couldn't -- and it was necessary 22 to permit, then we would look at other means. 23 Q (By Ms. Nagle) Okay. 24 A So with the latest information, you take a 25 different decision.</p>
<p>Page 167</p> <p>1 were mining, so we sought to try to get clarity to 2 try to get some concurrence, some explanation of why 3 either side -- why the BIA -- let's -- why the BIA 4 considered rock crushing mining, and the 5 explanation -- we didn't get an explanation. So 6 basically, you know, it was to submit the permit, 7 and let's see what happens. So it wasn't clear to 8 us, there was no explanation that -- you know, when 9 we asked questions why was it considered mining. So 10 it wasn't addressed. 11 We had legal assessments done that 12 supported that what we were doing was not mining, 13 and we had a history of the Osage -- Osage Nation 14 trying to stop the project. So that was -- this was 15 another attempt to stop the project, so we continued 16 on our activity. 17 Q So was the plan at this time to continue 18 with construction and excavation if the BIA wasn't 19 convinced that you were right? 20 A I think that's adding more to it than 21 what -- it's one particular input, so all the other 22 inputs that I just described earlier were -- led to 23 the decision to continue it. So it wasn't just 24 because the BIA said, no, we don't agree. Let's 25 continue. No. We tried multiple different ways to</p>	<p>Page 168</p> <p>1 Q I am now going to show you what will be 2 Exhibit 110, and this is a document that is Bates 3 stamped Osage Wind-038347, and at the top it's an 4 email to you from Bill Moskaluk, dated 5 November 22nd, 2014, with a subject line, Osage 6 standby cost estimate only. 7 (Exhibit 110 marked for identification.) 8 Q (By Ms. Nagle) Are you familiar with this 9 email exchange? 10 A Well, I received it. If you scroll down, 11 I'll get more familiar. 12 Q Sure. 13 A Okay. 14 Q So at the bottom of the first page is a 15 November 22nd, 2014, e-mail from Craig Mazurowksi to 16 Bill Moskaluk and Giuseppe DiMarzio, providing what 17 looks to be numbers of costs of how much it would 18 cost to halt construction; is that correct? 19 A Yes. 20 Q Okay. Okay. And was this the first time 21 that IEA had been asked to provide these cost 22 calculations? 23 A I'm not sure if we asked them verbally 24 before or took into consideration something sooner. 25 Q Do you know how -- at this time do you</p>

<p>Page 170</p> <p>1 know how many of the 84 excavations were complete?</p> <p>2 A By the end of November quite a bit, the</p> <p>3 excavations; rock crushing, less.</p> <p>4 Q Who asked that these calculations be done?</p> <p>5 A Who asked the -- I did.</p> <p>6 Q You did? And why did you ask for these</p> <p>7 numbers?</p> <p>8 A Because I wanted to assess what the impact</p> <p>9 of the costs were, if we had to -- if we couldn't</p> <p>10 continue on. So it was part of the decision-making</p> <p>11 process to look at all considerations, all factors</p> <p>12 and to understand the situation that we were in, to,</p> <p>13 you know, assess how to proceed, how long we</p> <p>14 could -- how long we could withhold while we took a</p> <p>15 look at the situation and what the financial impact</p> <p>16 of it was.</p> <p>17 Q Okay. All right. So let me take this</p> <p>18 document down, and we are now -- so this will be</p> <p>19 Exhibit 111, and it's document Bates stamped Osage</p> <p>20 Wind-019012. I note here at the bottom it's got</p> <p>21 your signature for approval, dated December 9th,</p> <p>22 '14, and it looks like it's a change order form.</p> <p>23 (Exhibit 111 marked for identification.)</p> <p>24 Q (By Ms. Nagle) Do you recognize this</p> <p>25 document?</p>	<p>Page 172</p> <p>1 more activities that need to be done, so it added</p> <p>2 additional cost to the project.</p> <p>3 Q Okay.</p> <p>4 A It would have added additional cost to the</p> <p>5 project.</p> <p>6 Q And here it says, "Importing material was</p> <p>7 also not advised by EGPNA legal department, because</p> <p>8 it would have given credit to Osage Nation's theory</p> <p>9 on the commercial use of soil and therefore</p> <p>10 abandoned." Who in EGPNA legal department told you</p> <p>11 not to consider importing material because it would</p> <p>12 give credibility to the Osage Nation's legal theory?</p> <p>13 A This is more of a misunderstanding on my</p> <p>14 part. So when we imported material, at no time</p> <p>15 would that be mining, but it would have -- so it</p> <p>16 was -- I think this is -- it's a misunderstanding.</p> <p>17 Q So I understand you are saying you had a</p> <p>18 misunderstanding about it, but who did you speak to</p> <p>19 about this from the EGPNA legal department?</p> <p>20 A Well, it was the same legal assessment</p> <p>21 from the -- that we did for whether we needed to get</p> <p>22 the permit or not, so the fact that we -- so that</p> <p>23 discussion of whether we need to stop doing the</p> <p>24 excavation works or the rock crushing, it's all part</p> <p>25 of that discussion, so -- as an alternative. So at</p>
<p>Page 171</p> <p>1 A Yes.</p> <p>2 Q Okay. And if you look -- if we look at</p> <p>3 the page ending in 13, there's some sort of</p> <p>4 explanatory notes here. There's the section called,</p> <p>5 Decision Process for Rock Crushing. Do you see that</p> <p>6 here?</p> <p>7 A Yes.</p> <p>8 Q And it explains that, let's see here, it</p> <p>9 says, "Given the issue with Osage Nation, the</p> <p>10 disposal of excavated rocks and import of</p> <p>11 backfilling material from outside the county was a</p> <p>12 more expensive solution." How was importing</p> <p>13 backfill material from outside the county a more</p> <p>14 expensive solution?</p> <p>15 A We had to -- again, I have to remember</p> <p>16 from the time that -- when the assessment was done,</p> <p>17 it's like where was suitable backfill, where could</p> <p>18 we -- where could we get the material, and it has to</p> <p>19 be trucked in. So there's various permits to truck</p> <p>20 it in, there's potential damage to the roads,</p> <p>21 especially on site, so we would have to do the</p> <p>22 potential construction for the roads, and then</p> <p>23 there's a cost impact of what do we do with the</p> <p>24 material we pull out. So all the different cost</p> <p>25 impacts from doing something else, because there's</p>	<p>Page 173</p> <p>1 the time I was writing this, I was trying to -- you</p> <p>2 know, to give the bullet points to the different</p> <p>3 issues. There would be no benefit, there's no -- no</p> <p>4 -- the commercial use of the soil therefore</p> <p>5 abandoned, so there was a misstatement on my part.</p> <p>6 Q Okay. So the mis- -- let me try to</p> <p>7 understand. Why was it important to not give credit</p> <p>8 to the Osage Nation's theory on the commercial use</p> <p>9 of the soil?</p> <p>10 A Well, again, as I stated, this is a</p> <p>11 misunderstanding. So the commercial use -- when you</p> <p>12 mine, the commercial use would be if we took the</p> <p>13 existing rock and sold it to -- and it went</p> <p>14 somewhere else, so we didn't want to have a</p> <p>15 commercial use of the existing. Bringing in rock</p> <p>16 from another entity for backfill didn't -- didn't</p> <p>17 provide any -- there was no -- there was no debate</p> <p>18 on that, whether that was a concern by the Osage</p> <p>19 Nation, to bring in external sourced material for</p> <p>20 backfill.</p> <p>21 Q When did you come to realize that your</p> <p>22 statement here was a misunderstanding?</p> <p>23 A Well, reading it now, as well as at the</p> <p>24 time. I think during the time in 2015, I was</p> <p>25 actually, you know, asked about it. It was a minor</p>

<p style="text-align: right;">Page 174</p> <p>1 point on the -- when we submitted this change order</p> <p>2 cost, when it was actually approved, you were asking</p> <p>3 questions, and I thought, well, that's not exactly</p> <p>4 correct here.</p> <p>5 <b>Q Did you ever take any steps to correct it?</b></p> <p>6 A No. It's an internal document, and the</p> <p>7 point of the document was to describe why we needed</p> <p>8 to justify the change order.</p> <p>9 <b>Q Okay.</b></p> <p>10 MS. NAGLE: Well, those are all of my</p> <p>11 questions that I have for now. Thank you so much</p> <p>12 for taking all this time to answer them.</p> <p>13 Kathy, I will turn the witness over to the</p> <p>14 United States now for questioning.</p> <p>15 MS. McCLANAHAN: Very good.</p> <p>16 DIRECT EXAMINATION</p> <p>17 BY MS. McCLANAHAN:</p> <p>18 <b>Q I'll start with actually the exhibit that</b></p> <p>19 <b>you just had up.</b></p> <p>20 MS. McCLANAHAN: I think you marked it</p> <p>21 Exhibit 111?</p> <p>22 MS. NAGLE: Yes.</p> <p>23 MS. McCLANAHAN: The change order?</p> <p>24 MS. NAGLE: Yes. Do you want me to --</p> <p>25 MS. McCLANAHAN: Pull that up. We've got</p>	<p style="text-align: right;">Page 176</p> <p>1 A Yeah.</p> <p>2 <b>Q I'm having trouble understanding that.</b></p> <p>3 <b>Was there an issue with the Osage Nation?</b></p> <p>4 A Yes.</p> <p>5 <b>Q And was the disposal of excavated rocks</b></p> <p>6 <b>and the import of backfilling material from outside</b></p> <p>7 <b>more expensive?</b></p> <p>8 A That was -- that was our understanding,</p> <p>9 yes, at the time.</p> <p>10 <b>Q Do you have reason to believe --</b></p> <p>11 A That was correct.</p> <p>12 <b>Q -- that's not true?</b></p> <p>13 A Say again?</p> <p>14 <b>Q Do you have reason to believe that that's</b></p> <p>15 <b>not true, that those things would not have been a</b></p> <p>16 <b>more expensive solution now?</b></p> <p>17 A It would have been a more expensive</p> <p>18 solution, so that is correct.</p> <p>19 <b>Q Okay. So I don't understand what the</b></p> <p>20 <b>misunderstanding that you had, both of these things</b></p> <p>21 <b>are true. What's the misunderstanding?</b></p> <p>22 A The fourth bullet point.</p> <p>23 <b>Q I'm sorry?</b></p> <p>24 A The fourth bullet point. Importing</p> <p>25 material was also not advised by EPG legal</p>
<p style="text-align: right;">Page 175</p> <p>1 it. I think we've got it. I think we might have</p> <p>2 located it somewhere different in the documents.</p> <p>3 What I have is Osage Wind-35491.</p> <p>4 MS. NAGLE: So that might be a different</p> <p>5 version.</p> <p>6 MS. McCLANAHAN: I think it is.</p> <p>7 MS. NAGLE: So up to you if you want to</p> <p>8 enter it as a new exhibit or --</p> <p>9 MS. McCLANAHAN: If you don't mind, would</p> <p>10 you just put up your 111.</p> <p>11 MS. NAGLE: Yeah, I'm happy to.</p> <p>12 MS. McCLANAHAN: At about the same spot</p> <p>13 you were about before.</p> <p>14 MS. NAGLE: So I was at down here, and if</p> <p>15 you need me to move it, just let me know.</p> <p>16 MS. McCLANAHAN: Excellent, very good.</p> <p>17 <b>Q (By Ms. McClanahan) So Mr. Price, under</b></p> <p>18 <b>the Decision Process for Rock Crushing, you</b></p> <p>19 <b>indicated that there was an issue with Osage Nation,</b></p> <p>20 <b>and now you realize that the statement that you made</b></p> <p>21 <b>was the result of a misunderstanding. Was that your</b></p> <p>22 <b>testimony?</b></p> <p>23 A That wasn't a result of mis- -- no. I</p> <p>24 misrepresented the bullet point.</p> <p>25 <b>Q You misrepresented the bullet point?</b></p>	<p style="text-align: right;">Page 177</p> <p>1 department, because it would have given credit to</p> <p>2 the Osage Nation's theory on the commercial use of</p> <p>3 soil and, therefore, abandoned.</p> <p>4 <b>Q So your testimony is today that it was</b></p> <p>5 <b>advised?</b></p> <p>6 A I mis- -- so the legal department -- so</p> <p>7 the importing of the material, it was more the</p> <p>8 exporting of material, so it's not import. Exchange</p> <p>9 that word for export.</p> <p>10 <b>Q Exporting material was not advised,</b></p> <p>11 <b>because that would have given credit to the Osage</b></p> <p>12 <b>Nation's theory. Is that what you intended to say?</b></p> <p>13 A It certainly wasn't importing material, so</p> <p>14 it was a mistake.</p> <p>15 <b>Q Okay. And exporting material was</b></p> <p>16 <b>definitely not advised by the legal department; is</b></p> <p>17 <b>that correct?</b></p> <p>18 A Correct.</p> <p>19 <b>Q I'm sorry. Did you say yes?</b></p> <p>20 A Yes. Correct.</p> <p>21 <b>Q Okay. The next bullet point -- actually,</b></p> <p>22 <b>let me skip to the one right after that that says,</b></p> <p>23 <b>"Finally, the crusher was ready to leave the project</b></p> <p>24 <b>after Thanksgiving." So was there one crusher on</b></p> <p>25 <b>site, or how many were there on site?</b></p>

<p>Page 178</p> <p>1 A We had up to three.</p> <p>2 <b>Q Okay. So were all three crushers going to</b></p> <p>3 <b>leave the project right after Thanksgiving?</b></p> <p>4 A I'm not sure. I don't remember.</p> <p>5 <b>Q Okay. And so by authorizing a change</b></p> <p>6 <b>order, you ensured that the crusher stayed after</b></p> <p>7 <b>Thanksgiving?</b></p> <p>8 A Again, I'm not sure of the timing of the</p> <p>9 project. It happened seven years ago when we had</p> <p>10 rock crushers there and how long they stayed.</p> <p>11 <b>Q Okay. But you were under a duty to your</b></p> <p>12 <b>employer, I mean, you made sure that these facts</b></p> <p>13 <b>that justified spending an additional \$2 million,</b></p> <p>14 <b>you made sure they were correct at the time, didn't</b></p> <p>15 <b>you?</b></p> <p>16 A Yes.</p> <p>17 <b>Q Okay. How long did you pause the rock</b></p> <p>18 <b>crushing?</b></p> <p>19 A Again, I don't know the exact time, but I</p> <p>20 know we paused for a short period of time. You</p> <p>21 know, I test -- stated earlier approximately two</p> <p>22 weeks, so I'm not sure --</p> <p>23 <b>Q Could have been two weeks?</b></p> <p>24 A You know, that's -- I know we paused a</p> <p>25 little bit while -- because when we got this BIA --</p>	<p>Page 180</p> <p>1 parties knew that this was a standard activity in</p> <p>2 building a wind farm. The issue that surprised</p> <p>3 people was this rock crushing. They felt that the</p> <p>4 feedback we got was -- through verbal discussions</p> <p>5 was that the rock crushing was not something that</p> <p>6 they were aware of or these rock crushing machines.</p> <p>7 <b>Q So I'm confused. Are you saying then that</b></p> <p>8 <b>because the BIA knew that excavation was going on,</b></p> <p>9 <b>that couldn't have been the subject of the request</b></p> <p>10 <b>to stop work?</b></p> <p>11 A That was -- and my understanding of my</p> <p>12 recollection is the issue that was the concern</p> <p>13 between the BIA and the activity we were doing was</p> <p>14 rock crushing, not excavation. Excavation --</p> <p>15 <b>Q But you --</b></p> <p>16 A -- is a standard process. It's a standard</p> <p>17 process. It's known -- Osage Nation knew about it,</p> <p>18 the Bureau of Indian Affairs knew about it, it was</p> <p>19 in our permits, everybody knew that the -- the</p> <p>20 activity associated with excavation. What was</p> <p>21 concerning or what was new to folks was this rock</p> <p>22 crushing machine, and it was the source of the</p> <p>23 consternation. That's what I'm explaining.</p> <p>24 <b>Q Okay. So in your mind the difference was</b></p> <p>25 <b>what the BIA knew was going on and then the new</b></p>
<p>Page 179</p> <p>1 that's right when we paused for a little bit of time</p> <p>2 to understand what...</p> <p>3 MS. McLANAHAN: Okay. Mary Kathryn, you</p> <p>4 can take down your screen. Thank you so much.</p> <p>5 <b>Q (By Ms. McClanahan) So for those two</b></p> <p>6 <b>weeks, do I understand your testimony to be that you</b></p> <p>7 <b>continued to excavate, but paused rock crushing?</b></p> <p>8 A Well, we definitely continued to excavate.</p> <p>9 When we first got the notice, we looked at the</p> <p>10 construction schedule, but we certainly took a stop</p> <p>11 on all works, and then once we understood that the</p> <p>12 issue of rock crushing was the concern, then</p> <p>13 excavations tech works continued, and --</p> <p>14 <b>Q And how did you -- I'm sorry. I'm sorry.</b></p> <p>15 <b>I cut you off. Go ahead.</b></p> <p>16 A No, I think I was done.</p> <p>17 <b>Q Okay. And how did you come to the</b></p> <p>18 <b>conclusion that rock crushing was the primary issue,</b></p> <p>19 <b>but excavation could continue?</b></p> <p>20 A Well, I recall this was discussions that</p> <p>21 Joan had with the BIA, the concerns with -- the</p> <p>22 excavation was a clearly defined activity. For</p> <p>23 example, I understood it was a special use permit.</p> <p>24 All parties knew we were doing excavations or</p> <p>25 removing of pits. There was some -- so we -- so all</p>	<p>Page 181</p> <p>1 <b>thing, the surprise element of rock crushing?</b></p> <p>2 A Yes. That was the -- that was what their</p> <p>3 concern was. That was the added --</p> <p>4 (Simultaneous speakers.)</p> <p>5 <b>Q (By Ms. McClanahan) How do you know that?</b></p> <p>6 A -- that was not known.</p> <p>7 <b>Q How do you know that?</b></p> <p>8 A You've asked. That's my recollection of</p> <p>9 the discussions that was had with Joan and others</p> <p>10 and correspondence. It was the rock crushing</p> <p>11 concern.</p> <p>12 <b>Q Did you ever talk to the BIA? Did you</b></p> <p>13 <b>ever talk to anybody who was with the BIA or</b></p> <p>14 <b>employed by the BIA?</b></p> <p>15 A I did not personally, no.</p> <p>16 <b>Q Okay. So your understanding of what was</b></p> <p>17 <b>the primary issue comes from your discussions</b></p> <p>18 <b>internally?</b></p> <p>19 A Yes, and all the different, various</p> <p>20 aspects of the documents, the availability of</p> <p>21 documents, looking over the requirements of what</p> <p>22 people knew and what people didn't know.</p> <p>23 <b>Q Did you have an understanding of who Robin</b></p> <p>24 <b>Phillips was?</b></p> <p>25 A I don't recall.</p>

<p>Page 182</p> <p>1 <b>Q Do you understand she's the one who signed</b>  2 <b>the stop work order?</b></p> <p>3 A I talked to many people many years, and I  4 don't remember everybody's name, especially on a  5 project that happened seven years ago. So I'm sorry  6 if I don't recognize this name and it becomes a  7 question for you.</p> <p>8 <b>Q We have it. Could you pull it up? I</b>  9 <b>think it's Exhibit 38 previously marked, and I</b>  10 <b>believe Ms. Nagle showed this document to you, I'm</b>  11 <b>going to show it to you again. It's Exhibit 38, and</b>  12 <b>it's a letter from Robin Phillips. Okay. If you</b>  13 <b>could stop right there.</b></p> <p>14 It says, "You are to refrain from any  15 further excavation of minerals until such time," but  16 you're indicating to me that when she says, "you are  17 to refrain from any further excavation of minerals,"  18 she didn't mean what she clearly said there?</p> <p>19 MR. McCORMACK: Object to the form of the  20 question, argumentative. You can answer it.</p> <p>21 A I can't see all the document. Can you  22 reduce it, please, because half of it is --</p> <p>23 <b>Q (By Ms. McClanahan) Surely.</b></p> <p>24 A Can you go larger? Okay. That's fine. I  25 can see it. So as I explained before in this</p>	<p>Page 184</p> <p>1 exaggeration, a huge exaggeration of what was going  2 on, so clearly --</p> <p>3 <b>Q I full well understand --</b></p> <p>4 A We should --</p> <p>5 <b>Q I full well understand that you take</b>  6 <b>issue --</b></p> <p>7 A May I finish, please?</p> <p>8 MR. McCORMACK: Hold on.</p> <p>9 MS. McCLANAHAN: No, no. I'm going to ask  10 that we strike it as nonresponsive.</p> <p>11 <b>Q (By Ms. McClanahan) I full well</b>  12 <b>understand, sir, that you take issue with the fact</b>  13 <b>that you had to find this document online when it</b>  14 <b>was posted for the public. I also understand you</b>  15 <b>take issue with the 30 feet as being a gross</b>  16 <b>representation. But if I'm not asking any question</b>  17 <b>about those, please do not continue to give me</b>  18 <b>nonresponsive answers.</b></p> <p>19 <b>So your testimony today is that you</b>  20 <b>understood, through further discussions, that when</b>  21 <b>Robin Phillips said, "You are to refrain from</b>  22 <b>further excavation of minerals," that she didn't</b>  23 <b>mean what she said?</b></p> <p>24 MR. McCORMACK: Object to the form of the  25 question, argumentative. You can answer the</p>
<p>Page 183</p> <p>1 document, in the previous testimony, we received  2 this document secondhand. We received it from other  3 people prior. It has some inaccuracies in the  4 document, gross inaccuracies, and so it led us to --  5 to ask clarity, since it had these gross  6 inaccuracies on it, what was the concern? And the  7 concern we got wasn't the excavation, it was the  8 crushing the rocks.</p> <p>9 <b>Q So, again, my question was, when Robin</b>  10 <b>Phillips says, "You are to refrain from any further</b>  11 <b>excavation of minerals," you believe she did not</b>  12 <b>mean what she said there?</b></p> <p>13 MR. McCORMACK: Object to the form of the  14 question, asked and answered, and --</p> <p>15 MS. McCLANAHAN: I haven't had an answer.</p> <p>16 MR. McCORMACK: -- and argumentative. But  17 you can answer the question.</p> <p>18 A So like on the body, it does have  19 inaccuracies, as I've explained. We took this  20 document, we paused, we asked, we inquired about  21 what is -- what is the concern here, and the concern  22 was rock crushing. It wasn't the excavation,  23 because the parties knew excavation works were going  24 to continue. The pit, approximately 60 foot wide  25 and 30 foot deep, 30 foot deep is an extreme gross</p>	<p>Page 185</p> <p>1 question.</p> <p>2 A So when we got the document in the way we  3 had, we questioned the document, as I've described,  4 because it had these issues with it. So the  5 conclusions that you will refrain from these  6 activities were based on gross inaccuracies that  7 took place in the document, so we asked for an  8 explanation of what the concern was, and the concern  9 was -- is the rock crushing. It wasn't the  10 excavation. And that is my testimony or my  11 deposition point.</p> <p>12 <b>Q (By Ms. McClanahan) Do you have to</b>  13 <b>excavate rock before you crush rock?</b></p> <p>14 A Yes.</p> <p>15 <b>Q But it's your understanding then that</b>  16 <b>because Ms. Phillips knew that excavation was</b>  17 <b>ongoing, that that couldn't have been the issue that</b>  18 <b>she had with your operation?</b></p> <p>19 MR. McCORMACK: Object to the form of the  20 question, argumentative. You can answer the  21 question.</p> <p>22 A What's the question? I don't understand  23 your question.</p> <p>24 <b>Q (By Ms. McClanahan) It's your</b>  25 <b>understanding that because Ms. Phillips had to have</b></p>

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1 -- and you keep using the word, she knew about it,  
 2 she knew about excavation, that she couldn't have  
 3 meant for you to refrain from any further  
 4 excavation?  
 5 MR. McCORMACK: Object to the form of the  
 6 question, assumes facts and argumentative. You can  
 7 answer.  
 8 A The excavation as part of the project was  
 9 a permitted activity, it was allowed, so it was a  
 10 special use permit. The activities that we did  
 11 associated with the project, excavation was a known  
 12 activity. So you have to excavate to build the  
 13 turbine foundations, so it was a described event, so  
 14 we had the rights to do it. So the concern was,  
 15 when we got this letter, what is -- what is the  
 16 concern? The concern was crushing rock, not  
 17 excavation.  
 18 Q (By Ms. McClanahan) So you indicated that  
 19 excavation was a permitted activity. Did I hear  
 20 that correctly?  
 21 A It was an activity -- in my understanding  
 22 was listed -- my recollection, it was listed in the  
 23 activity that was associated with building the  
 24 project, yes.  
 25 Q Listed where?

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1 A In the special use permit, amongst others.  
 2 Q Which is issued by what -- I'm sorry. Go  
 3 ahead. Were you finished?  
 4 A Yes.  
 5 Q Which is issued by who?  
 6 A It's -- I don't recall the entity that  
 7 issued the permit. It was a known activity that was  
 8 associated with construction on the project, and  
 9 there was no objections to this time.  
 10 Q There were no objections --  
 11 (Simultaneous speakers.)  
 12 A (Inaudible.)  
 13 Q -- to the special use permit?  
 14 A There was no --  
 15 Q There were no objections?  
 16 A There was no objections to excavation that  
 17 I'm aware of, no.  
 18 Q Okay. And a special use permit, you are  
 19 not aware of what governmental body issued that?  
 20 A Well, I don't remember the actual entity  
 21 that issued the special use permit.  
 22 Q And you understand that there are  
 23 different bodies that govern the use and the  
 24 permitting of different things?  
 25 A Yes.

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1 Q So, like, for instance, are you familiar  
 2 with the wild eagle take permit?  
 3 A I'm vaguely familiar that we had a -- this  
 4 permit requirement.  
 5 Q Okay. You don't think that just because  
 6 there's a special use permit that you could do away  
 7 with asking the United States Fish and Wildlife  
 8 Service for an incidental take of wild eagles, do  
 9 you?  
 10 A No.  
 11 Q In other words, the special use permit  
 12 didn't usurp every other permit that might be  
 13 required; is that right?  
 14 MR. McCORMACK: Object to the form of the  
 15 question, argumentative. You can answer it.  
 16 A My point is the special use permit  
 17 provides clarity of what the activities of the  
 18 project would be. If the Osage Nation had issues  
 19 with certain activities of the project, that would  
 20 be for them to -- that would be for them to issue  
 21 the concern of how the project was constructed. The  
 22 Osage Nation knew about the permit, they knew how  
 23 the project was to be constructed, they knew  
 24 excavation work was going to be done, and they never  
 25 questioned the excavation works.

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1 Q (By Ms. McClanahan) They never raised an  
 2 objection to the special use permit?  
 3 A To the excavation works, so you are  
 4 putting words in my mouth.  
 5 Q Do you know who owns the minerals that sit  
 6 beneath the surface in Osage County?  
 7 A My understanding, the subsurface minerals  
 8 were Osage -- the Osage Nation, oil and gas, these  
 9 were from the Osage Nation.  
 10 Q Do you understand that all the minerals  
 11 that underlie the surface in Osage County belong to  
 12 the Osage Nation?  
 13 A Yes.  
 14 MS. McCLANAHAN: You can take that exhibit  
 15 down. Could we look at what's previously been  
 16 marked as Exhibit 68? It is labeled Osage Wind-  
 17 PRIV-000165.  
 18 Q (By Ms. McClanahan) I understand that you  
 19 looked at this document with Ms. Nagle, so my  
 20 questions here will be brief. If you take a look at  
 21 the bullet point that reads, "The large rocks  
 22 removed from the excavation works is being crushed  
 23 and reused for backfill." The next sentence says,  
 24 "This is normal, as we do not want to dispose of the  
 25 large excavated rocks," and then in parentheses it

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1 says, "possibly would then be considered mining."  
 2 **How did you reach the conclusion that that might be**  
 3 **considered mining?**  
 4 A Because we would be using or putting these  
 5 rocks to another -- use them for another intended  
 6 purpose; therefore, they're a potential of  
 7 commercial use. With the -- this was a discussion  
 8 within the team, it was a discussion within our  
 9 environmental group, as well as the -- Joan Heredia,  
 10 as well as the legal team that suggested that if we  
 11 disposed of this rock or did something else with it,  
 12 other than putting it as backfill that it might be  
 13 considered as mining; therefore, we didn't want to  
 14 have any potential or any concerns that the activity  
 15 we were doing would be considered that, so we didn't  
 16 do it.  
 17 **Q Okay. So I'll just ask you, who gave you**  
 18 **your working definition of the word mining?**  
 19 A Well, this is -- we got this from our  
 20 legal consultant, what mining is, got that also from  
 21 internal staff, so -- of that activity that we're  
 22 doing is not mining.  
 23 MR. McCORMACK: Bill, could you speak up?  
 24 I'm having a hard time hearing you.  
 25 THE WITNESS: Sorry.

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1 THE REPORTER: Could you repeat your  
 2 answer?  
 3 A I said I got this from the -- from our  
 4 legal staff and from third party consultant legal  
 5 that assess the activity we're doing, how it's  
 6 mining, and that -- and then we had some internal  
 7 discussions about the activities that -- to not  
 8 cause or not create any additional issues by doing  
 9 activities that would be considered a commercial  
 10 activity, I mean, a commercial gain. If we removed  
 11 the rocks and they went somewhere else, the  
 12 perception is that there would be considered some  
 13 commercial value to that.  
 14 **Q (By Ms. McClanahan) So you specifically**  
 15 **had legal advice that pertained to large rocks being**  
 16 **removed and being crushed and reused for backfill,**  
 17 **or were you applying a working definition of mining**  
 18 **to what you knew to be the situation on the ground?**  
 19 A My recollection is that was the advice we  
 20 received from legal counsel, that the activity we  
 21 were doing by crushing rock and using it as backfill  
 22 was not mining, in multiple documents.  
 23 **Q Okay. The next bullet point, it says,**  
 24 **"Because Enel is to operate the facility on a**  
 25 **long-term basis," so it was always the understanding**

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1 that Enel would be operating the facility; is that  
 2 correct?  
 3 A Yes.  
 4 **Q Have you ever heard the term "as-built"?**  
 5 A Yes.  
 6 **Q Can you tell me what that means to you?**  
 7 A As-built is usually -- it's referred to as  
 8 a drawing or document that describes how the project  
 9 was actually built. So you have design  
 10 specifications, so as-builts would be something that  
 11 if there was a deviation from what the design  
 12 drawings showed that you would reflect it in  
 13 as-built documents. Sometimes as-built drawings are  
 14 exactly as designed, some would have some indication  
 15 of changes made along the way through to the  
 16 construction of the project.  
 17 **Q Okay. And we looked at a change order; do**  
 18 **you recall that in this case?**  
 19 A Yes.  
 20 **Q So is it fair to say that there was**  
 21 **significant differences in the way the project was**  
 22 **designed and the way it was -- we thought it was**  
 23 **going to be built and then the conditions that you**  
 24 **encountered once you got there?**  
 25 A I don't think that that's completely

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1 correct. I think in this particular project, when  
 2 it came to the foundation pieces, as I expressed  
 3 before, general subsurface conditions are always a  
 4 tricky thing. Why is because no one absolutely  
 5 knows what you are going to encounter, so you do  
 6 geotechnical investigations, you drill bore holes,  
 7 if you think about that the documents that we  
 8 chatted about before, the engineering documents --  
 9 so just because you drill a bore hole does not mean  
 10 that the conditions --  
 11 **Q Are you receiving a call from your**  
 12 **counsel? Are you receiving a call from your**  
 13 **counsel?**  
 14 A No, I'm not.  
 15 MR. McCORMACK: He's not receiving a call  
 16 from his counsel, Counselor.  
 17 MS. McCLANAHAN: Thank you.  
 18 **Q (By Ms. McClanahan) Go ahead. I'm sorry.**  
 19 **I didn't want to interrupt you, but I heard a phone**  
 20 **buzzing.**  
 21 A I'm not going --  
 22 MR. McCORMACK: Wait until the question is  
 23 over.  
 24 A You're not supposed to say -- yeah. So  
 25 that when it comes to the foundations, when it comes

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1 to geotechnical, when you do a bore hole to  
 2 understand what's underneath the ground, it's not  
 3 always representative of what's five feet next to  
 4 it. So you try to do investigations of subsurface.  
 5 No one really knows. You don't know if there's a  
 6 cavern. You don't know if there's a huge boulder.  
 7 You get a general clue of subsurface conditions. So  
 8 you do that, and you base your construction contract  
 9 on that. That protects both parties.

10 If you don't do that, then what would  
 11 occur is the contractor would make some presumption  
 12 that the rock conditions would be quite severe and  
 13 the cost would be high, especially on an EPC  
 14 contract. An EPC contractor balanced by a contract,  
 15 in this particular case, is -- that we used on this  
 16 project, is a -- is a term contract. It doesn't  
 17 have variable costs unless it's a change order. So  
 18 if the contractor says, I will do this complete job  
 19 under this complete scope for this exact price,  
 20 except if there's different subsurface conditions  
 21 than reflected in the geotechnical investigations.

22 So here we had a situation where we -- as  
 23 I described before, where the contractor had  
 24 represented that the subsurface conditions were  
 25 different and that the rocks --

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1 **Q And that --**  
 2 A -- were harder than had thought.

3 **Q Which resulted in you blasting a dozen**  
 4 **more sites than you had anticipated?**  
 5 A Than we anticipated, but, then again,  
 6 after we -- when you're doing these things, you are  
 7 doing them on a realtime basis, and you are going  
 8 along. It's hard to stop and say, look, no, no, no,  
 9 that -- that rock is rippable, you know, continue  
 10 working on it, continue jackhammering, continuing  
 11 excavation, so the contractor made representations,  
 12 they are the experts, and we were -- we were given  
 13 representations by the contractor it was too  
 14 difficult and we needed to do blasting.

15 I've also given in my deposition that we  
 16 subsequently did the engineering report, that many  
 17 of those foundations that we blasted were not  
 18 necessary. So it was a representation of the  
 19 contractor, and it was primarily for a couple of  
 20 things; for commercial benefits, because they got  
 21 paid more after the 27th, as well as they were able  
 22 to do it more quickly, because the blasting was  
 23 quicker than the continuing to hammer to do the  
 24 excavation site.

25 **Q And you needed it to go faster?**

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1 A We needed -- we needed to do it -- we  
 2 needed it to be done on time, so that the  
 3 contractor, whether -- for whatever reason, labor  
 4 force wasn't making progress, unskilled excavator,  
 5 whatever -- whatever reasons could happen, less,  
 6 less manpower on the job than the contractor had  
 7 thought, maybe underestimated the activity.  
 8 Regardless, the contractor was slipping on schedule  
 9 to complete the excavations, that's correct.

10 **Q And back to my question about as-builts,**  
 11 **are you aware of any as-builts that were rendered at**  
 12 **the conclusion of this project?**  
 13 A Am I aware of any? Yeah, I believe we did  
 14 receive as-builts for the project. It's a standard  
 15 activity.

16 **Q So it's a standard activity to have an**  
 17 **as-built?**  
 18 A At the completion of a project, yes.

19 **Q Would it surprise you if there were no**  
 20 **as-builts in this project?**  
 21 A It would, yeah. Unless --

22 **Q Were as -- I'm sorry. Go ahead.**  
 23 A -- the project was built to complete  
 24 specifications, so it was built as the drawings  
 25 said. So these are as-builts. It was built exactly

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1 like this.

2 **Q So at the time that at least some of the**  
 3 **excavation was going on, were you on site?**  
 4 A Yes.

5 **Q Did you see the explosion, some of the**  
 6 **blasting occurring?**  
 7 A No, nobody -- nobody sees that, even --  
 8 people are evacuated.

9 **Q Did you see the excavation that took place**  
 10 **after the blasting?**  
 11 A Yes.

12 **Q Did you see rocks piled up alongside of**  
 13 **the holes?**  
 14 A I saw larger than normal rocks. Blasting  
 15 would do that, yes, versus doing standard  
 16 excavation. So, yes -- because it would break apart  
 17 the rock in bigger chunks. So when you excavate it,  
 18 it would be bigger chunks, yes.

19 **Q And you saw those up alongside the holes**  
 20 **that were being dug for the turbine bases?**  
 21 A Yes, I saw a couple of examples.

22 **Q Okay. Did you or did anyone on your staff**  
 23 **keep measurements or keep records about what kind of**  
 24 **rocks you were encountering and how much material**  
 25 **was excavated?**

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1 A I'm not aware.

2 **Q I'm sorry, you are not --**

3 A I'm not aware of what records -- I

4 think -- of what was excavated. I think,

5 mathematically, there's the hole, and the size of

6 hole was done, and the amount of material from that

7 hole should be able to be calculated.

8 **Q Did you encounter -- do you know if the**

9 **excavation encountered limestone?**

10 A I recall in the geotechnical

11 investigations there's some materials in the rock

12 included limestone, amongst others.

13 **Q What -- yeah. What others do you recall?**

14 A Clay, just other forms of rock structures.

15 I mean, the reason why I pick up clay, clay is

16 usually good for compactible soil, so -- it helps

17 with compaction, but -- so I pick up on that, but

18 the type of material that's under the ground were

19 identified in the geotechnical reports, so --

20 **Q So clay -- I'm sorry. Go ahead.**

21 A So there's documents that show, based on

22 the core samples taken and for the geotechnical

23 investigation that took place, that the cores give

24 the rock formations that were encountered.

25 **Q Okay. But at the time when excavation**

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1 **actually took place, you are not aware of any**

2 **records being kept to say, we encountered this much**

3 **limestone, this much clay, this much other material?**

4 A Correct, not that I'm aware of.

5 **Q And you indicated that clay would be**

6 **useful for compacting?**

7 A In some cases, yeah. I just -- in my

8 many, many, many, many projects I've built, I mean,

9 some projects I have clay in there, but, again, I'm

10 not a structural engineer, I'm not a civil engineer,

11 so it's not my form of expertise. So it's just

12 something that I've come across in my years of

13 experience that leads me to think about it.

14 **Q Okay. I wonder if you could help me find**

15 **the right term for something. Once in place, do**

16 **these wind turbines need -- I've heard it referred**

17 **to as a setback around a turbine base where certain**

18 **activities just can't be carried on?**

19 A Where certain activities -- setback. I

20 mean, I'm not sure. I'm not sure what you are

21 referring to.

22 **Q Do you know what a setback is?**

23 A Yeah, but it's not --

24 **Q What does that mean to you?**

25 A Well, it's not --

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1 **Q I'm sorry. What does that mean to you?**

2 A Just the distance from the wind turbine.

3 There are certain activities that need to take

4 place. So when you compact the ground and compact

5 the soil, you have heavy lifting equipment that's

6 there, such as the crane, because the crane has to

7 have competent soil and competent material

8 underneath it to be able to properly lift these

9 large tower sections and then have the lifting

10 that's in the air. So usually the pads from the

11 wind turbine generator pads are built, they are

12 built for what they call these crane pads, and they

13 are built for --

14 **Q Okay.**

15 A -- a certain storage, they are built for a

16 certain lay-down of components, they're built for

17 certain maneuvering, so it's all part of the

18 engineered documents.

19 **Q Okay. Talk to me about after the wind**

20 **turbine is in place. Does there need to be a**

21 **setback where certain activities -- like, if a**

22 **landowner decided they wanted to drill a water well**

23 **or build a house, you wouldn't expect them, or maybe**

24 **you -- you can't have them building that, you know,**

25 **three feet away from your turbine base, can you?**

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1 A I wouldn't -- no. Sure, you wouldn't

2 want -- well, you have the wind turbine, so there's

3 a certain activity because the wind turbine is

4 spinning and it's 360 degrees, so it can go all the

5 way around.

6 **Q Okay.**

7 A So you have this diameter of the blade, so

8 there's a certain requirement there, yeah.

9 **Q And insofar as subsurface, you dig a hole**

10 **that's bigger than is necessary for the actual**

11 **turbine base; is that correct?**

12 A A little bit, yeah.

13 **Q And then -- I'm putting this in very**

14 **simple terms, because I'm certainly not a wind**

15 **turbine expert, but you place the wind turbine base**

16 **in the hole, and you put this compaction material**

17 **around it, backfill, right?**

18 A Sure. And to be more -- to be simple, I

19 mean, it's -- you do the excavation, which is

20 basically you're pulling the material, excavation is

21 that. You are pulling the material out of a hole,

22 you create a hole. The hole is a design, the size

23 of the hole, the physical location, the depth, the

24 diameter is all -- it's engineering defined, and

25 then you -- we place a mud mat, which is like a

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1 formal foundation on the base. It's just a simple  
 2 concrete, non-finished pad, and then you -- we build  
 3 a rebar cage, which is the structural support of the  
 4 wind turbine. It has what they call a base and  
 5 pedestal. The pedestal is where the wind turbine  
 6 connects to. We pour the concrete, so you -- you  
 7 pour the concrete on the base. It cures for a  
 8 period of time. You pour the concrete all at once.  
 9 You have to, because if you don't, it's in various  
 10 different -- it has to be continued concrete --  
 11 where the concrete is poured all at the same time --  
 12 not all at the same time, but you can't let it cure  
 13 for a period of time between different concrete  
 14 batches. And then it cures for a period of time.  
 15 You do a test, and then you do the  
 16 backfill. So the backfill comes last, and the  
 17 backfill provides the surrounding structural part.  
 18 So if you think about it, a simpler thing is if you  
 19 look at a bridge post, so then it holds up a bridge.  
 20 So you've got the pillar that would also provide  
 21 structural support, the soil and the structural  
 22 support underneath the ground for that pillar. A  
 23 wind turbine is similar to that.  
 24 **Q Okay. So -- and I understand that it's**  
 25 **much more technical than what you've just laid out**

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1 **for me, there are specific kinds of backfill,**  
 2 **there's specific amounts of backfill, and the**  
 3 **quality of the rock has to be crushed down to two**  
 4 **inches or whatever is called for; is that correct?**  
 5 A Yeah, it's from the civil engineering.  
 6 The civil engineering, we have a specification on  
 7 the material for backfill, so it's -- and it has to  
 8 be a certain type of structural rock. Sometimes  
 9 when you do excavations of some project the -- where  
 10 the rock -- or where you are doing excavations it's  
 11 not suited for backfill. Most cases it is, almost  
 12 all cases it is. I mean, you use the rock you pull  
 13 out, you sift it, which is a screen of sorts, and  
 14 then -- to separate the different sizes of rock, and  
 15 then you use it for backfill and compaction.  
 16 **Q So you would certainly need to prevent**  
 17 **anybody from coming in and disrupting this backfill**  
 18 **that you've placed, the compaction that you've done,**  
 19 **all the kind of lateral support that you've provided**  
 20 **for this turbine, you would need to prevent somebody**  
 21 **from coming in and disrupting that; is that correct?**  
 22 A I'm not sure what you mean by disrupt, but  
 23 would they -- would they dig anything close to the  
 24 wind turbine foundation?  
 25 **Q Exactly.**

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1 A I'm not a civil engineer, but I would say  
 2 that's -- that is correct. There's a certain  
 3 distance with -- you wouldn't want activity because  
 4 the surrounding rock is providing that support. To  
 5 the extent --  
 6 **Q Even the rock -- I'm sorry, go ahead.**  
 7 A To the extent of the distance, I don't  
 8 know. I mean, I'm not a civil engineer.  
 9 **Q So even the rock that is surrounding what**  
 10 **you've placed, as you've constructed the turbine**  
 11 **base, is necessary to provide lateral support; is**  
 12 **that correct?**  
 13 A Yes.  
 14 **Q And you are just not aware of the**  
 15 **distance -- I'm almost thinking of it like a ring**  
 16 **around the turbine base.**  
 17 A I think that's -- to the extent of the  
 18 size of that ring, I'm not sure.  
 19 **Q Okay. And do you know usually how a wind**  
 20 **farm operator keeps folks from drilling a water -- a**  
 21 **water well or doing something three feet to the side**  
 22 **of the wind turbine?**  
 23 A Well, the wind turbine -- all wind  
 24 turbines have pads, so there's actual -- a physical  
 25 pad where the turbine is on, so to drill a well --

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1 you know, you can't drill a well, because it  
 2 requires a derrick, and you would hit the blades.  
 3 So you can't have anything close to the turbine, you  
 4 know, you couldn't have anything high, so the -- but  
 5 the wind turbine -- all the pads for the wind  
 6 turbines are areas that are -- that are part of the  
 7 construction and part of the allotted use with the  
 8 landowner.  
 9 **Q So you obtain a lease from the landowner,**  
 10 **and in that lease it would say, I get to use the**  
 11 **area around the wind turbine?**  
 12 A I don't understand. Who gets to use?  
 13 **Q That you as the wind farm company, you get**  
 14 **to use all the area that's around there that's**  
 15 **necessary for that lateral support.**  
 16 A Yes, it's lateral support, it's also used  
 17 for potential maintenance. Say, if one of the  
 18 blades fails or gets hit by lightning or you have to  
 19 do maintenance on the Nacelle, you have to bring a  
 20 crane in to do corrective or preventative  
 21 maintenance. So you have to bring heavy equipment,  
 22 so the pad needs to be -- needs to continue to stay  
 23 there until -- for the project, for servicing the  
 24 wind turbines.  
 25 **Q And you just put all that in a lease?**

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1 A Yes.

2 MS. McCLANAHAN: Could we look at a

3 document that is labeled, and I do not think that is

4 an exhibit, so this may be a new one, Osage Wind

5 PRIV-000698. I think we're at 112, so we'll label

6 that as 112.

7 (Exhibit 112 marked for identification.)

8 **Q (By Ms. McClanahan) All right, Mr. Price,**

9 **do you see that document?**

10 A Yes.

11 **Q Does it appear to be an email from Steve**

12 **Champagne?**

13 A Yes.

14 **Q And you are the first person there listed**

15 **in just a number of recipients; do you see that?**

16 A Yes.

17 **Q And the subject matter is, in all caps,**

18 **Urgent, Confidential Osage Litigation. Do you see**

19 **that?**

20 A Yes.

21 **Q So Mr. Champagne indicates that they are**

22 **anticipating that either the Osage Nation or the BIA**

23 **may file stop work orders as soon as this coming**

24 **Monday. Do you recall receiving this email?**

25 A Yes.

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1 **Q Do you recall that Mr. Champagne asked**

2 **everybody to kind of fan out and get information**

3 **that would be needed to shore up a defense against**

4 **either the Nation or the BIA?**

5 A Yes.

6 **Q Do you remember exactly what information**

7 **you were tasked with getting?**

8 A No, I don't remember all the information

9 that he asked us to provide, but for my -- for me it

10 would be based on the -- certainly execution aspects

11 of the project, we're doing -- how we're doing it,

12 where the project status is, where the construction

13 activities to date are, how we're progressing.

14 MS. McCLANAHAN: So I believe attached to

15 this email -- and we may have to go down, down --

16 okay. The next document is Osage Wind PRIV-000700.

17 I guess we'll mark that as 113.

18 (Exhibit 113 marked for identification.)

19 **Q (By Ms. McClanahan) Does that list look**

20 **familiar to you?**

21 A Sure, yes.

22 **Q So do you recall that you set about to get**

23 **the items that are listed there under number 2c?**

24 A Yes.

25 **Q Specifically, it just has -- and I'm just**

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1 **assuming, because it has, in red, Bill, and you are**

2 **also a recipient on the email. So you set out to**

3 **get that information that is listed there?**

4 A Yes.

5 **Q The first thing it says is, "Declarations**

6 **and exhibits establishing economic damage/hardship**

7 **to Osage Wind and to the public." Did you get a**

8 **declaration?**

9 A I don't recall what kind of declaration we

10 got, but we did have subcontractors that said if we

11 stopped work or some support contractors, would

12 there be an impact to their business if we stopped

13 works, and I recall us seeking that and providing

14 some.

15 **Q Do you recall if you asked Mr. Moskaluk to**

16 **prepare a declaration?**

17 A Yes.

18 **Q And did you ask Mr. Moskaluk to**

19 **prepare the -- or I'm sorry, to prepare a statement,**

20 **or did you, as this seems to indicate, get the**

21 **information to Modrall, the law firm?**

22 A I don't remember the exact instructions to

23 Bill, but most of these questions are -- as a site

24 manager would be responsible to get, he's working

25 with the subcontractors. I'm not there 100 percent

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1 of the time, so he would be working with these

2 contractors. So what form of response he would be

3 used to provide, you know, I don't recall, but as a

4 site manager, he would -- a lot of these things he

5 would be more best suited to take.

6 **Q So are these items that are listed in 2c,**

7 **are they items that would have been -- the**

8 **information to answer those questions, it would have**

9 **been available to you?**

10 A Would I have seen -- I'm sorry, I don't

11 understand your question.

12 **Q So 2c there seems to ask for total costs**

13 **incurred to date, delayed damages, costs to idle**

14 **equipment and just a laundry list of items. Is that**

15 **the kind of information that you would have had**

16 **access to?**

17 A I would state -- based on this, there's a

18 list of things that Steve Champagne is asking for.

19 So he's created a list that he needs to support any

20 potential litigation, and lists -- what he's done is

21 he's gone through and said, okay, here who is going

22 to do what, and under 2c my name is listed, and

23 said, Bill, you are to lead the effort to obtain

24 this information. So it would have been my

25 responsibility to do this, supported by my staff.

<p>Page 210</p> <p>1 So I would, basically, in some of these</p> <p>2 cases, some of these things, would delegate it to</p> <p>3 staff and say, would you obtain this information,</p> <p>4 and some stuff I would perhaps look at myself.</p> <p>5 <b>Q Okay. But all of this information would</b></p> <p>6 <b>have been available to you, either through your</b></p> <p>7 <b>staff or just directly?</b></p> <p>8 A Some of it is not normal for us to achieve</p> <p>9 or look at, because we don't normally -- we're busy</p> <p>10 working on and executing the project, not defending</p> <p>11 a type of, you know, legal position. Our job is to</p> <p>12 execute the project. So we had a challenge here</p> <p>13 being brought on by an external entity, so we had to</p> <p>14 defend our rights. So our legal team is asking us</p> <p>15 for information, so we -- so some of this stuff is</p> <p>16 not something that we normally keep track of on a</p> <p>17 daily basis, so we would -- we would pause and go</p> <p>18 try to seek this information as we were requested by</p> <p>19 legal counsel.</p> <p>20 MR. KIRBY: Excuse me, excuse me, Counsel,</p> <p>21 sorry to interrupt. This is Bob Kirby from Norton,</p> <p>22 Rose. I just -- Tom let me know he's been locked</p> <p>23 out of the deposition room, so if we can just take a</p> <p>24 short break, and we can see if we can figure that</p> <p>25 out, that would be appreciated.</p>	<p>Page 212</p> <p>1 If you could scroll up now.</p> <p>2 <b>Q (By Ms. McClanahan) Do you see that you</b></p> <p>3 <b>are looped in, I suppose, with a later copy or</b></p> <p>4 <b>forward of the email chain to you on October 22nd at</b></p> <p>5 <b>about 2:45?</b></p> <p>6 A Yes.</p> <p>7 <b>Q Okay. And again, back down to Lynn</b></p> <p>8 <b>Slade's email where he is conveying that he had</b></p> <p>9 <b>talked to Alan Woodcock of the Interior Department</b></p> <p>10 <b>here in Tulsa. He said they had a brief meeting,</b></p> <p>11 <b>which included other subjects, at which no decisions</b></p> <p>12 <b>were reached. There will be a larger meeting in</b></p> <p>13 <b>Pawhuska. The next sentence says, "He asked only</b></p> <p>14 <b>one question. Are we currently pouring foundations</b></p> <p>15 <b>or replacing material?" And then the next sentence</b></p> <p>16 <b>says, "I advised we were not to my knowledge." At</b></p> <p>17 <b>the time, October 22nd, you were actually pouring</b></p> <p>18 <b>foundations and replacing materials; is that</b></p> <p>19 <b>correct?</b></p> <p>20 A I believe so.</p> <p>21 MS. McCLANAHAN: And now if we could look</p> <p>22 at Exhibit 84. I believe it's been previously</p> <p>23 marked, and it's the Bates number Osage Wind-000114.</p> <p>24 We'll scroll down a little bit.</p> <p>25 (Exhibit 84 previously marked for</p>
<p>Page 211</p> <p>1 THE VIDEOGRAPHER: We're off the record at</p> <p>2 10:33 a.m.</p> <p>3 (A recess was had.)</p> <p>4 THE VIDEOGRAPHER: We are back on the</p> <p>5 record at 10:50 a.m. central.</p> <p>6 MR. McCORMACK: I just want to apologize.</p> <p>7 I do have people in my home here, and one of them</p> <p>8 managed to kick the router out of the -- router plug</p> <p>9 out of the wall about five or seven minutes before I</p> <p>10 was aware of what was going on, so I actually missed</p> <p>11 about five or seven minutes of Bill's testimony, and</p> <p>12 then I had to reboot and all this other business, so</p> <p>13 my apologies for causing that kind of logistical</p> <p>14 headache, and I'm ready to proceed.</p> <p>15 MS. McCLANAHAN: Okay. I'd like to pull</p> <p>16 up -- I don't think this has been marked previously,</p> <p>17 but it's Osage Wind PRIV-000157. Go down just a</p> <p>18 little bit so we can see Lynn Slade's, October 22nd,</p> <p>19 2014, email.</p> <p>20 (Exhibit 114 marked for identification.)</p> <p>21 <b>Q (By Ms. McClanahan) I don't believe you</b></p> <p>22 <b>were copied on this; is that correct?</b></p> <p>23 A It doesn't appear from the email</p> <p>24 addresses.</p> <p>25 MS. McCLANAHAN: Okay. Then I'm sorry.</p>	<p>Page 213</p> <p>1 identification.)</p> <p>2 <b>Q (By Ms. McClanahan) I want to draw your</b></p> <p>3 <b>attention to the lengthy email there from Joan</b></p> <p>4 <b>Heredia to a number of people and then carbon</b></p> <p>5 <b>copying a number of people, and you are included in</b></p> <p>6 <b>that; do you see that?</b></p> <p>7 A Yes.</p> <p>8 <b>Q In the second paragraph do you see a</b></p> <p>9 <b>sentence that says, "They indicated to me that a</b></p> <p>10 <b>sandy soil mining permit is required pursuant to 25</b></p> <p>11 <b>C.F.R. 214." Do you see that sentence?</b></p> <p>12 A Yes.</p> <p>13 <b>Q So that's something different than the</b></p> <p>14 <b>conditional use permit that you spoke of earlier; is</b></p> <p>15 <b>that right?</b></p> <p>16 A The sandy soil mining permit and the</p> <p>17 special use permit are different permits, yes.</p> <p>18 <b>Q And the BIA is a different agency than the</b></p> <p>19 <b>entity that issues the conditional use permits; is</b></p> <p>20 <b>that right?</b></p> <p>21 A Yes.</p> <p>22 <b>Q Okay. Then if we could scroll down a</b></p> <p>23 <b>little bit further, I think it's the last paragraph</b></p> <p>24 <b>we see on this page, and, of course, you are welcome</b></p> <p>25 <b>to read as much as you need for context, but that</b></p>

<p style="text-align: right;">Page 214</p> <p>1 paragraph states, "She stated that our use of the</p> <p>2 material would require a permit." Do you see that?</p> <p>3 A The starting paragraph, yes.</p> <p>4 Q So it's not the crushing or refinement of</p> <p>5 rocks that would require a permit; is that right?</p> <p>6 MR. McCORMACK: Object to the form of the</p> <p>7 question, speculative and assumes facts, foundation,</p> <p>8 but you can answer the question.</p> <p>9 A Well, actually if you look at the rest of</p> <p>10 the paragraph it kind of does say that, so I'm not</p> <p>11 sure where your point is. She questioned the use of</p> <p>12 the rock crushers, that we were using the material</p> <p>13 in question, that if we normally would bring in</p> <p>14 material and that would be purchased to go to the</p> <p>15 activity. So this was more of the issue.</p> <p>16 I replied, no, we were crushing the rock,</p> <p>17 because the rock varied in size from 3 inches to a</p> <p>18 couple of feet, and we had to crush it to put it</p> <p>19 back in the hole. I explained that it seemed she</p> <p>20 was referring to what we call engineered fill, and</p> <p>21 rock was not engineered fill. So the concern here</p> <p>22 was, as I understood this document, it was the fact</p> <p>23 that we were doing this rock crushing. That is my</p> <p>24 interpretation of the --</p> <p>25 (Simultaneous speakers.)</p>	<p style="text-align: right;">Page 216</p> <p>1 Q Well, yeah, the same paragraph, so the</p> <p>2 paragraph at the first sentence says, "She specified</p> <p>3 the letter stated BIA wanted us to stop work until</p> <p>4 we got a permit." And then a couple of sentences</p> <p>5 later it says, "She again reiterated that we need to</p> <p>6 stop work." Do you understand that to be a</p> <p>7 direction from a federal official to stop work?</p> <p>8 MR. McCORMACK: Object to the form of the</p> <p>9 question, argumentative. You can answer.</p> <p>10 A I understood that this individual wanted</p> <p>11 us to stop activity. What's -- there's -- what</p> <p>12 actual activity she wanted to stop.</p> <p>13 Q (By Ms. McClanahan) So you are unclear</p> <p>14 when she says, "stop work" what she means?</p> <p>15 A Correct. Is work a defined term? What</p> <p>16 exactly is she asking us to do? All construction?</p> <p>17 You can't move -- we can't build roads? We can't</p> <p>18 stop work on foundation? What exactly is she asking</p> <p>19 us to stop doing? It doesn't specify.</p> <p>20 Q So the defendants were unclear what was</p> <p>21 meant when the letter asked for a stop work and then</p> <p>22 this discussion mentions stopping work and then,</p> <p>23 again, reiterate -- reiterates the need to stop</p> <p>24 work?</p> <p>25 A This was, again, an internal document, but</p>
<p style="text-align: right;">Page 215</p> <p>1 Q Okay. In the --</p> <p>2 A -- not the excavation.</p> <p>3 Q So as you read that paragraph, you are</p> <p>4 under the impression then that the two parties to</p> <p>5 this conversation, whoever it is, is informing the</p> <p>6 BIA about the kinds of activities they are</p> <p>7 undertaking, varied in sizes from 3 inches to a</p> <p>8 couple of feet, we crushed it, we put it back in the</p> <p>9 hole, so there's some explanation of the rock</p> <p>10 crushing going on?</p> <p>11 A Yes.</p> <p>12 MS. McCLANAHAN: Okay. If you could go</p> <p>13 just to the very next -- stop right there.</p> <p>14 Q (By Ms. McClanahan) So after all that</p> <p>15 explanation, she stated that the "BIA wanted us to</p> <p>16 stop work until we got a permit." Do you read that?</p> <p>17 A Yes.</p> <p>18 Q It doesn't say stop crushing, correct?</p> <p>19 A Yes.</p> <p>20 Q And then a little further down in that</p> <p>21 paragraph it says, "She again reiterated that we</p> <p>22 need to stop work," and, again, this is a direction</p> <p>23 from a federal official to stop work; is that right?</p> <p>24 A Wait a minute. Where are you referring to</p> <p>25 this at?</p>	<p style="text-align: right;">Page 217</p> <p>1 the discussion -- we had some subsequent discussion</p> <p>2 on the interpretation, but there was no clarity from</p> <p>3 the BIA and what actually we were supposed to stop.</p> <p>4 The concern was the rock crushing, not the</p> <p>5 excavation. So while I understand --</p> <p>6 Q So when she said --</p> <p>7 A -- there are different permits, excavation</p> <p>8 work is in -- is in -- is in the special issue</p> <p>9 permit. All parties knew we were doing it.</p> <p>10 Q Again, you never spoke to anybody at BIA?</p> <p>11 A No.</p> <p>12 Q So you left it --</p> <p>13 A Which is normal.</p> <p>14 Q And you left it to Joan Heredia to do that</p> <p>15 outreach?</p> <p>16 A Joan Heredia was the head of regulatory</p> <p>17 compliance and permits. Since this was a permit</p> <p>18 related issue, she was the appropriate person to</p> <p>19 make contact in this regard.</p> <p>20 Q Okay.</p> <p>21 MS. McCLANAHAN: If we could -- I think</p> <p>22 this is another new one, Osage Wind PRIV-000311. I</p> <p>23 think we're on Exhibit 114 -- 115.</p> <p>24 (Exhibit 115 marked for identification.)</p> <p>25 Q (By Ms. McClanahan) I direct your</p>

<p>Page 218</p> <p>1 attention to the first line there. It says, to Bill</p> <p>2 Price, and it includes a link to a flickr account.</p> <p>3 Are you familiar with what this link might have</p> <p>4 represented?</p> <p>5 A I don't know. Let me look at the</p> <p>6 document. I can get -- already get a better idea of</p> <p>7 what it might include.</p> <p>8 Q Okay. Do you recall looking at any photos</p> <p>9 of the site that were published in the Osage News?</p> <p>10 A I don't recall.</p> <p>11 Q Right under that one that is to you is one</p> <p>12 from you. Do you see that? It's from you to kind</p> <p>13 of a list of people there, dated October 14th, 2014.</p> <p>14 A Sure, yes.</p> <p>15 Q In the first paragraph you are</p> <p>16 discussing -- so your name is Bill, you are</p> <p>17 discussing Bill Moskaluk. The second paragraph</p> <p>18 says, "I sent a message to Bill on lockdown on all</p> <p>19 communication at the site." So is this you</p> <p>20 directing Bill to lock down communication at the</p> <p>21 site?</p> <p>22 A Yes.</p> <p>23 Q Why would you do that?</p> <p>24 A Well, because we were under, seemed like,</p> <p>25 media attack, seems like the -- there was a direct</p>	<p>Page 220</p> <p>1 Q When it says that, "I reminded them that</p> <p>2 everything needs to be directed to Bill, and then he</p> <p>3 is to defer to external communications," first of</p> <p>4 all, this is you speaking, so I guess what you are</p> <p>5 saying is that you reminded them that everything</p> <p>6 needs to go through Mr. Moskaluk?</p> <p>7 A Correct.</p> <p>8 Q Is that correct?</p> <p>9 A Yes. Bill is the most senior</p> <p>10 representative on site. I wasn't always at the</p> <p>11 project, so we had to have a local representative if</p> <p>12 anything were to be asked. So it would be asked to</p> <p>13 him, and he would respond such that I understand</p> <p>14 your question, I'll defer to the appropriate party.</p> <p>15 That was the instruction --</p> <p>16 Q Then he --</p> <p>17 A -- correct.</p> <p>18 Q Then he was to defer to External</p> <p>19 Communications, and I see that external</p> <p>20 communications is capitalized, is that a department</p> <p>21 within Enel?</p> <p>22 A It was probably a misprint, but it should</p> <p>23 have been deferred to internal, not external.</p> <p>24 Q Oh, okay.</p> <p>25 MS. McCLANAHAN: Switching gears here a</p>
<p>Page 219</p> <p>1 media engagement to -- in our view to exacerbate or</p> <p>2 to create a situation that perhaps wasn't there. So</p> <p>3 if our staff had provided some information that</p> <p>4 might be misconstrued, we wouldn't want that to</p> <p>5 happen. So site staff are trained to build</p> <p>6 projects, not to be media relations experts. So if</p> <p>7 media were to ask a question to site staff, should</p> <p>8 they respond? No, they shouldn't. They are not</p> <p>9 trained, they are not prepared, and it would likely</p> <p>10 be used for a purpose not -- not intended, at least</p> <p>11 on our part. So the answer is, if we were to have</p> <p>12 any inquiries, you direct it to the appropriate</p> <p>13 individual.</p> <p>14 Q So when you say, "lockdown on all</p> <p>15 communication at the site," you are only referring</p> <p>16 to the press?</p> <p>17 A Or external -- external sources, yeah.</p> <p>18 Q I'm sorry. I don't know what that means,</p> <p>19 external. So anybody outside of the company?</p> <p>20 A Yes. So if there was a question or</p> <p>21 inquiry on the project, it should be addressed to</p> <p>22 the appropriate person. Why? Because there's some</p> <p>23 extreme exaggeration going on and misrepresentation</p> <p>24 on behalf of the Osage Nation to elicit what we</p> <p>25 viewed as a public relations attack.</p>	<p>Page 221</p> <p>1 little bit, can we look at Exhibit 85 that's been</p> <p>2 previously marked. It's marked Osage Wind</p> <p>3 PRIV-000112. I'm going to go down towards -- well,</p> <p>4 let's look at the top so that we're clear on who is</p> <p>5 talking and everything.</p> <p>6 So this is to Mr. Francesco, with a bunch</p> <p>7 of folks copied, and then it's from David Post.</p> <p>8 (Exhibit 85 previously marked for</p> <p>9 identification.)</p> <p>10 Q (By Ms. McClanahan) Can you tell me who</p> <p>11 is David Post?</p> <p>12 A He's the head of business development.</p> <p>13 Q Okay. And what was his role --</p> <p>14 A (Inaudible.)</p> <p>15 Q -- at this time, at the time?</p> <p>16 A Yes.</p> <p>17 Q What was his role in the Osage Wind</p> <p>18 project?</p> <p>19 A He was the business development, the</p> <p>20 entity that developed the project until it was</p> <p>21 handed over to ENC. So Enel has a distinct three</p> <p>22 department within the company of business</p> <p>23 development, engineering construction, operations.</p> <p>24 They're our three main business lines. So David</p> <p>25 Post was responsible for the business development</p>

<p>Page 222</p> <p>1 activities of the project until it hit a certain                  2 maturity and was handed over to engineering                  3 construction. So David Post generally handed the                  4 project over to me, so he was responsible to get the                  5 project to the state of construction. So this tends                  6 to -- whether it's purchasing the project, whether                  7 it's doing the financial close, the permitting --                  8 <b>Q Okay.</b>                  9 A -- entity, Joan Heredia was a function of                  10 business development, and then -- so he was the head                  11 of that department.                  12 <b>Q Okay. The first sentence says, "We've</b>                  13 <b>just received a letter from the Bureau of Indian</b>                  14 <b>Affairs addressed to you, in which we are being</b>                  15 <b>asked to stop the construction of the Osage project</b>                  16 <b>until we have a so-called sandy soil permit." So</b>                  17 <b>was it your understanding they were referring to</b>                  18 <b>that same letter that we looked at earlier that was</b>                  19 <b>signed by the superintendent of the Osage Agency?</b>                  20 A Yes.                  21 <b>Q Okay. And then it specifically says, "We</b>                  22 <b>are being asked to stop construction." Do you see</b>                  23 <b>that?</b>                  24 A Yes.                  25 <b>Q And it doesn't make a distinction about</b></p>	<p>Page 224</p> <p>1 be, you know, broken down -- it wasn't intended to                  2 be broken down the way you are, and it's just to                  3 give an update to our CEO of the situation. So when                  4 we stay, stop construction, it's a business                  5 development perspective of what we were being asked                  6 to do. Temporarily stop excavation activities.                  7 David Post doesn't know -- didn't know certain                  8 aspects and the details of what excavation is and                  9 what the subsequent activities were. So his -- his                  10 understanding of this is -- it's not his area of                  11 expertise.                  12 <b>Q So right before the bullet points do you</b>                  13 <b>see the language that says, "This matter is being</b>                  14 <b>treated with the utmost priority and urgency, and</b>                  15 <b>the team is currently proceeding under the following</b>                  16 <b>plan." So does that give some implication that</b>                  17 <b>perhaps there's a team that has developed a plan</b>                  18 <b>which is set out in this email?</b>                  19 A Yes. The team is Enel, and we're -- these                  20 are activities, so he's giving an update to the CEO                  21 of Enel North America that we have a problem at one                  22 of our projects, and here's a letter that we                  23 received, and here's certain activities that we're                  24 doing that addresses this activity. So it's an                  25 update. It's considered a high level update, not a</p>
<p>Page 223</p> <p>1 <b>excavating versus rock crushing, correct?</b>                  2 A Correct.                  3 <b>Q And then if we could go down to the bottom</b>                  4 <b>of that email, there are some bullet points, and I</b>                  5 <b>want to draw your attention specifically to the last</b>                  6 <b>bullet point. It says, "The stop work letter only</b>                  7 <b>pertains to excavating activities." Isn't that</b>                  8 <b>contrary to what you just testified to, that you</b>                  9 <b>thought the letter did not apply to excavation</b>                  10 <b>activities?</b>                  11 A David Post is the head of business                  12 development. He doesn't know anything about                  13 engineering construction. He's not --                  14 <b>Q Okay.</b>                  15 A He's not an expert on these activities.                  16 So it's his interpretation.                  17 <b>Q Okay.</b>                  18 A You know, when we say, stop construction                  19 work, he doesn't know if a foundation is the only                  20 thing that's going on. He's not aware of every                  21 aspect of the engineering construction. So this is                  22 a high level communication between David Post and                  23 our CEO that says, hey, look, this is his view of                  24 the situation, and he's getting him up to date. So                  25 it's a very high level, it's not a -- it's not to</p>	<p>Page 225</p> <p>1 detailed update, not a precise update, an update to                  2 let the CEO of our company know that we have a                  3 problem.                  4 <b>Q So why do you think he used the words, the</b>                  5 <b>stop work letter only pertains to excavating</b>                  6 <b>activities? Why did he emphasize and use the word</b>                  7 <b>"only"?</b>                  8 MR. McCORMACK: Object to the form of the                  9 question, requires speculation, but you can answer                  10 the question.                  11 A Because that was the basis of the letter                  12 received from the BIA. It's work associated with                  13 the excavation, this mining permit. Joan reports to                  14 him, so I'm speculating that Joan gave him an update                  15 that said, hey, look, they are not happy with how we                  16 are crushing rock. So, you know, to David, crushing                  17 rock is excavation. I mean, again, it's a                  18 speculation on my part. So he's asking us to stop                  19 this activity.                  20 <b>Q (By Ms. McClanahan) So you think when he</b>                  21 <b>used the word "excavation," he intended to say,</b>                  22 <b>"rock crushing"?</b>                  23 MR. McCORMACK: Object to the form of the                  24 question.                  25 A I think he --</p>

<p>Page 226 Object</p> <p>1 MR. McCORMACK: Wait, wait, wait.</p> <p>2 to the form of the question, foundation,</p> <p>3 argumentative. You can answer.</p> <p>4 A I think that he used excavation as a</p> <p>5 catch-all phrase, yes, I do. Catch-all phrase</p> <p>6 with -- I don't think David Post -- he's never built</p> <p>7 a project. He's not an engineer. It's not his area</p> <p>8 of responsibility, and when he represents</p> <p>9 excavation, I think it's a very limited knowledge of</p> <p>10 what that means. Again, this memo is a letter to</p> <p>11 our CEO. It's a high level, so I think in this case</p> <p>12 he's suggesting that it affects one certain aspect</p> <p>13 of the construction project, certain other aspects</p> <p>14 could continue, so I think that's his intent of this</p> <p>15 high level correspondence.</p> <p>16 Q Let me show you another document. This</p> <p>17 one is -- this one is, I think, new, Osage Wind</p> <p>18 PRIV-000306, and I want to skip down to the third</p> <p>19 page, which is labeled 308, and a little further</p> <p>20 down.</p> <p>21 (Exhibit 116 marked for identification.)</p> <p>22 Q (By Ms. McClanahan) This is -- I'll just</p> <p>23 represent to you that this is kind of a complicated</p> <p>24 chain to follow, but I want us to focus in on the</p> <p>25 October 11th, 2014, email at 2:46 from</p>	<p>Page 228</p> <p>1 Q -- Osage Wind project would have been who?</p> <p>2 A Enel, Osage or whatever the business</p> <p>3 entity, I don't remember, that owned the project.</p> <p>4 Q Okay. Then the second sentence there from</p> <p>5 Steve says, "Until we confirm one way or the other,</p> <p>6 we need to comply with the letter. Steve." Do you</p> <p>7 recall Mr. Champagne saying that we actually need to</p> <p>8 comply with the letter?</p> <p>9 A Yes.</p> <p>10 Q So excavation work was stopped?</p> <p>11 A Well, there was, as I expressed before,</p> <p>12 certain -- we did do a pause. So when Steve wrote</p> <p>13 this, if I don't -- you know, on October 11th, I</p> <p>14 would have had a discussion with Steve and said,</p> <p>15 hey, Steve, this is -- this is the discussion, this</p> <p>16 is what's happening, and then we would get further</p> <p>17 clarification, you know, on what his -- his -- so</p> <p>18 that he's up-to-date on what the concern is. The</p> <p>19 concern on our view, that we talked about in staff,</p> <p>20 was the fact of the rock crushing. Excavation</p> <p>21 wasn't at the time -- during this time wasn't the</p> <p>22 big issue, and, again, it's -- excavation seems to</p> <p>23 be a catch-all phrase here with many different</p> <p>24 entities. The excavation or the digging of a hole</p> <p>25 wasn't the problem. It was the crushing of the</p>
<p>Page 227</p> <p>1 Mr. Champagne, and it says, "Joan, do you know</p> <p>2 anything about this permit? I'm copying Bill P and</p> <p>3 ask him to find out if the contractor got it,</p> <p>4 assuming we do, in fact, need it. Until we confirm</p> <p>5 one way or the other, we need to comply with the</p> <p>6 letter." Do you recall Mr. Champagne asking you to</p> <p>7 find out if the contractor had got the permit?</p> <p>8 A I don't recall, but if he did ask, I would</p> <p>9 say -- I would have told him, this is not a</p> <p>10 contractor permit, it's not in the scope of work</p> <p>11 document that we have -- or contract or agreement we</p> <p>12 have with the contractor, and no -- no place is it</p> <p>13 listed that the contractor's responsibility is this</p> <p>14 particular permit.</p> <p>15 Q So if it wasn't listed as his</p> <p>16 responsibility, the contractor's responsibility, it</p> <p>17 was nobody's responsibility, or whose responsibility</p> <p>18 was it?</p> <p>19 A Well, if the permit -- the sandy soil</p> <p>20 permit, because I've seen the document, it was --</p> <p>21 the permit would have been from the entity that</p> <p>22 seeks to mine the rock, so the -- it would have been</p> <p>23 the responsibility of the owner --</p> <p>24 Q Which in the case of the --</p> <p>25 A -- of the project.</p>	<p>Page 229</p> <p>1 rock, which was considered mining, that was the</p> <p>2 issue.</p> <p>3 Q So despite what -- and I forget his name</p> <p>4 now that we were just looking at. Despite what</p> <p>5 Mr. Champagne said and what Mr. Post said, you do</p> <p>6 not believe the stop work order related to</p> <p>7 excavation?</p> <p>8 A I'm not sure what Mr. Storch said, but</p> <p>9 Mr. Port -- David Post, we just looked at it. I'm</p> <p>10 familiar with that particular document, the summary</p> <p>11 he gave to Francesco Venturini, and I don't think</p> <p>12 David Post understands what excavation is. It was</p> <p>13 definitely -- he was using a catch-all phrase, that</p> <p>14 is my belief, yes. And Steve, he didn't --</p> <p>15 obviously doesn't want -- didn't want the conflict</p> <p>16 or to create a conflict, so he suggested we stop</p> <p>17 activities until you get this mining permit. The</p> <p>18 act of excavation was never considered mining.</p> <p>19 Excavation -- even in the courts don't -- don't</p> <p>20 suggest that excavation is a form of mining. So the</p> <p>21 mining -- the concern was when we were crushing</p> <p>22 rock. So we were asked to -- so that is where we</p> <p>23 focused our attention to, is -- is, in fact, this</p> <p>24 crushing rock, because it's not something that</p> <p>25 people were -- generally felt that they weren't</p>

<p style="text-align: right;">Page 230</p> <p>1 aware that we were doing. The excavation of                  2 foundations, everybody knew, Osage Nation knew, it                  3 was part of the construction of the wind farm. It                  4 wasn't a secret that you build a hole to install a                  5 wind turbine. So the concern wasn't excavation, the                  6 concern was what we were doing with the material                  7 that we excavated.                  8 <b>Q So if the Nation knows that someone</b>                  9 <b>intends to go out and dig a hole, then they can't be</b>                  10 <b>concerned that that might be mining?</b>                  11 MR. McCORMACK: Object to the form of the                  12 question, argumentative. You can answer.                  13 A Yeah, I -- whether they're -- what the                  14 Osage Nation is concerned or not, they knew about                  15 it, they never had any objection to us excavating a                  16 hole. It's what we did with the minerals that they                  17 were concerned with.                  18 <b>Q And you said even the courts didn't focus</b>                  19 <b>on excavation. Did I hear that correctly?</b>                  20 A That's my interpretation. If it's                  21 wrong -- I mean, my understanding is the Tenth                  22 Circuit was -- the concern was what made it mining                  23 was rock crushing and not the actual excavation.                  24 <b>Q Who told you that?</b>                  25 A My understanding was it was discussion</p>	<p style="text-align: right;">Page 232</p> <p>1 <b>backfilling and O&amp;M building foundations." What are</b>                  2 <b>O&amp;M?</b>                  3 A It's the operations and maintenance                  4 building, so it's like a site, it's like a facility                  5 building. So your O&amp;M staff would occupy this                  6 building. It also could be some control equipment,                  7 switch gear in this building.                  8 <b>Q Okay. Giuseppe is saying we might be</b>                  9 <b>crushing rocks for both cable trenching, to use as</b>                  10 <b>backfill, and O&amp;M building foundations. Do you know</b>                  11 <b>if rock was crushed for those two things?</b>                  12 A I don't know. The difference with an O&amp;M                  13 building is the foundation. You don't go very far                  14 down. So you build a concrete slab on top of the                  15 surface. You do some -- maybe a foot or two, I                  16 don't know the depth, it depends on the engineering                  17 drawings, so you don't go down 10 feet. So this 60                  18 foot by 90 foot is a two-dimensional footprint, a                  19 rectangle on surface. It doesn't describe the depth                  20 of the foundation, so Giuseppe is just saying it                  21 might, so I don't know if we -- I don't recall any                  22 rock crushing that we did for the cable trenching.                  23 <b>Q How far down would the cable trenching go,</b>                  24 <b>if you recall?</b>                  25 A Cable trenching, typically, goes down</p>
<p style="text-align: right;">Page 231</p> <p>1 with legal counsel.                  2 <b>Q And have you ever read the Tenth Circuit</b>                  3 <b>decision?</b>                  4 A No.                  5 <b>Q Do you know how many times they use the</b>                  6 <b>word "excavation"?</b>                  7 A No.                  8 MR. McCORMACK: Objection, argumentative.                  9 <b>Q (By Ms. McClanahan) I'm sorry, what was</b>                  10 <b>your answer?</b>                  11 A Well, if I said I didn't read it, then how                  12 would I know how many times they used excavation, so                  13 the answer is no.                  14 <b>Q That's a good point.</b>                  15 MS. McCLANAHAN: All right. If we could                  16 look at Osage Wind PRIV-000606.                  17 (Exhibit 117 marked for identification.)                  18 <b>Q (By Ms. McClanahan) Do you see that? I</b>                  19 <b>think this is a new one. It will be, what are we --</b>                  20 <b>117. This appears to be an email to -- you are one</b>                  21 <b>of the recipients. It's from Giuseppe -- Giuseppe</b>                  22 <b>DiMarzio, if I'm saying that correctly. At the top</b>                  23 <b>it says "Mike, the WTG foundation details are</b>                  24 <b>correct." Then it says, "I would mention that we</b>                  25 <b>might need to crush rocks for cable trenching</b></p>	<p style="text-align: right;">Page 233</p> <p>1 approximately three feet. So, basically, if you                  2 think of a backhoe, a bucket, and so you dig a                  3 trench, a narrow trench with a narrow bucket. They                  4 also have a -- you have a trenching machine. It                  5 basically looks like a circular device with a bunch                  6 of buckets that just turns, and you've seen                  7 something like this, and it just makes a trench,                  8 narrow for cable. In some cases -- in this                  9 particular project we also used boring, where we                  10 bored into the ground from one end to the other and                  11 ran conduit and cable within that conduit.                  12 MS. McCLANAHAN: If we could go down a                  13 little bit, Michelle, to the October 17 at 1:47                  14 e-mail from Mr. Scott to Mike Tierney.                  15 <b>Q (By Ms. McClanahan) Do you see that?</b>                  16 A Yes.                  17 <b>Q Let's look -- do you see the yellow</b>                  18 <b>part -- and I think this is how it was produced, so</b>                  19 <b>we didn't make that alteration to the document. But</b>                  20 <b>right before there it says, "Bill &amp; Giuseppe, unless</b>                  21 <b>the original language is true, I suggest modifying</b>                  22 <b>this sentence as follows, in case the station and/or</b>                  23 <b>O&amp;M building foundations are larger." And then the</b>                  24 <b>sentence in yellow says, "The excavation for the</b>                  25 <b>foundations for the turbine measure approximately</b></p>

<p>Page 234</p> <p>1 10 feet deep and between 50 and 60 feet in 2 diameter." Do you see that? 3 A Yes. 4 Q And if there appear -- there appears to be 5 struck-out language, language that was struck out, 6 that says, "are the largest excavations"? 7 A Yes. 8 Q Do you see that? 9 A Yes. 10 Q So the sentence seemed to formerly say 11 that the excavations for the foundations are the 12 largest excavations, but then, according to the 13 note, we need to take that out, and the explanation 14 is because, "in case the station and/or O&amp;M building 15 foundation is larger." Do you see that? 16 A Yes. 17 Q So excavated backfill was used beyond just 18 the WTG foundations; is that correct? 19 A Estimate -- yeah, when we -- yeah, the 20 cable was a couple of feet. 21 Q So you used it for both -- I'm sorry, go 22 ahead. 23 A Excavated backfill, so when you -- yeah, 24 you dig a hole, or you dig a trench, you put a 25 cable on it -- or actually, you dig a trench, you</p>	<p>Page 236</p> <p>1 cables nor the O&amp;M building. 2 Q Are you saying it wasn't necessary or 3 there was no rock crushing activity for either the 4 cables or the building? 5 A Not to my knowledge, because it wouldn't 6 be necessary. There's no -- it's quite a different 7 purpose. You crush the rock for structural content, 8 to get it to a size so that it can be used for a 9 structural backfill. The cable trenches nor the O&amp;M 10 building require that. 11 Q So you used it for backfill, you just 12 didn't have to process it through a crusher; is that 13 what you are saying? 14 A You dig a hole, and you put the rock back 15 in the hole, yes. 16 Q Okay. If we go up a little further, you 17 did point out that this first email that we were 18 looking at, first in time I'll say, email was 19 between Bill Scott, Mike Tierney and Lynn Slade, and 20 then it looks as though you don't get looped in 21 until 2:30 in the afternoon when Mike Tierney says 22 to both you and Giuseppe, "Please review it as soon 23 as possible and provide your comments to me." So 24 you were asked to review the construction related 25 facts that were going to be included in the</p>
<p>Page 235</p> <p>1 put some sand -- a layer on the bottom, you put a 2 sand layer on top, it's to allow the cable to expand 3 and contract, and then you put the material that you 4 dug a hole, and you put it back. 5 Q Okay. 6 A The difference with the -- with the cable 7 is it's not a structural support rock, so crushing 8 of it is less necessary or very less unlikely, 9 because it's not -- the crushing of rock is not -- 10 and a cable trench is not structural. In the case 11 of the O&amp;M building, same thing. Not using the -- 12 whatever you remove for backfill, because not 13 providing structural support for a tower section. 14 So then, again, the O&amp;M building might have gone 15 down a foot. It's just a concrete slab. You build 16 a building on top of a concrete slab, so it's a 17 completely different aspect. 18 You have an individual, Mike Tierney, or 19 even what, from Bill Scott, these individuals are 20 legal persons, so they are -- they are into writing 21 language that's -- you know, let's make it more 22 clear. So if it's not an unknown or if it's not 23 clear at the time, let's remove this ambiguous 24 language, but I can say, at the end, the rock 25 crushing wasn't necessary, to my knowledge, for the</p>	<p>Page 237</p> <p>1 Modrall's memo to Alan Woodcock; is that correct? 2 A We were asked to review this particular 3 information, where it was used for and how it was 4 used. You know, we were just asked to review this 5 statement, and that's what we did. 6 Q Well, let's look at the first sentence of 7 Bill Scott's email. It says, "We are adding a 8 statement of facts to the memo that will go to Alan 9 Woodcock." Do you see that? 10 A Yes. 11 Q So maybe at the time you got this email 12 you did understand that you were being asked to 13 review a statement of facts in a memo that would 14 ultimately go to Alan Woodcock, whoever that is? 15 A Yes. 16 Q Okay. Then we're going to jump up in the 17 email chain a little bit there. Do you see the 18 email from Mike and it was to you, it's the 2:27 19 email and it says, "Forgot to replace one of the 20 Enel's with Osage Wind's. Please do so throughout." 21 Do you know why Tierney was intent on replacing all 22 of the Osage -- all of the Enel's with Osage Wind's? 23 A If I understood, Osage Wind was the name 24 of the entity of the project. 25 Q Okay.</p>

<p>Page 238</p> <p>1 A I think it's more of a legal -- to</p> <p>2 properly name the entity and wasn't to -- it wasn't</p> <p>3 Enel, it wasn't the business entity of Enel, so he</p> <p>4 was properly reflecting who was the owner of the</p> <p>5 project.</p> <p>6 <b>Q Okay. And I think this next exhibit has</b></p> <p>7 <b>been marked previously as number 98. It's Osage</b></p> <p>8 <b>Wind PRIV-000128.</b></p> <p>9 (Exhibit 98 previously marked for</p> <p>10 identification.)</p> <p>11 <b>Q (By Ms. McClanahan) Do you see that as</b></p> <p>12 <b>previously marked? Okay.</b></p> <p>13 A Not yet. Still waiting. Okay. Coming</p> <p>14 up.</p> <p>15 <b>Q Sir, I will just let you know this is a</b></p> <p>16 <b>very long and convoluted chain of emails, but</b></p> <p>17 <b>happily, we're going to just look at the first two</b></p> <p>18 <b>pages of it here. I'll draw your attention to the</b></p> <p>19 <b>October 13th, 2014, at 9:32 where it's Bill Price at</b></p> <p>20 <b>Enel wrote, "If we look at this from another</b></p> <p>21 <b>view...if we filled out an application for whatever</b></p> <p>22 <b>permit, what would we be applying for? What would</b></p> <p>23 <b>we say in the application?" Is it true that you</b></p> <p>24 <b>were not certain that you never needed a permit?</b></p> <p>25 A Yeah, it's completely true. I mean, I</p>	<p>Page 240</p> <p>1 <b>Q I was just going to ask. Did you just say</b></p> <p>2 <b>you did have the application in front of you?</b></p> <p>3 A At the time I received an application of</p> <p>4 what the permit requirements were, yeah.</p> <p>5 <b>Q Okay.</b></p> <p>6 A And I read the requirements and asked the</p> <p>7 information that the permit was asking for. I said,</p> <p>8 what this is -- what I'm saying here is, we were</p> <p>9 being asked to submit a permit, and the permit asks</p> <p>10 certain information that I'm, like, well, how do we</p> <p>11 fill this out? I said, we're not doing any of this</p> <p>12 stuff. So I struggled to figure out how to apply</p> <p>13 for a permit that it was asking for information that</p> <p>14 we weren't doing. So that -- so we were -- in other</p> <p>15 words, we were asked to submit a sandy soil permit,</p> <p>16 but the conditions in the permit that it asked us to</p> <p>17 enter, to be clear, we weren't doing. So what I was</p> <p>18 asking here is, how do I fill out this permit?</p> <p>19 <b>Q So what specifically --</b></p> <p>20 A Okay.</p> <p>21 <b>Q I'm sorry, were you finished?</b></p> <p>22 A Yes, ma'am.</p> <p>23 <b>Q What specifically -- what was the first</b></p> <p>24 <b>question that hung you up, that you were unable to</b></p> <p>25 <b>answer?</b></p>
<p>Page 239</p> <p>1 didn't think we needed a permit. I wasn't aware of</p> <p>2 the permit when we got this question from the BIA,</p> <p>3 this concern. We said, okay, what's the concern?</p> <p>4 We had a concern from an entity that was very</p> <p>5 unhappy with the project and didn't want the project</p> <p>6 built, so we took a look at what the concern was,</p> <p>7 and said, do we need this permit. So, yeah, I</p> <p>8 looked at it seriously.</p> <p>9 Then I looked at the application that it</p> <p>10 asked us to fill out and said, look, submit the</p> <p>11 sandy soil permit, and I said, what do I fill out?</p> <p>12 We're not mining. We're not doing this. How do I</p> <p>13 even fill this thing out? So it's a completely --</p> <p>14 the email is, like, well, I don't know what to put</p> <p>15 in this permit, because we're not doing what it asks</p> <p>16 us to do. So am I supposed to make something up?</p> <p>17 So, you know, we were informed we weren't mining.</p> <p>18 What is -- so the permit asks this certain</p> <p>19 information that we weren't doing, so what am I</p> <p>20 supposed to put in a permit? So in order to get the</p> <p>21 permit you have to fill it out and put information</p> <p>22 in, since the information -- so, yeah, I struggled</p> <p>23 with that, so...</p> <p>24 <b>Q And I'm sorry --</b></p> <p>25 A Go ahead.</p>	<p>Page 241</p> <p>1 A Well, I'd have to look at it again. One</p> <p>2 of them was -- it was, like, you know, describe the</p> <p>3 mining activity you're doing. We weren't doing any</p> <p>4 mining activity.</p> <p>5 <b>Q And at that juncture you kind of threw up</b></p> <p>6 <b>your hands and said, this permit application --</b></p> <p>7 A Well, what am I -- if I have a permit</p> <p>8 application and we're not doing mining, how do I</p> <p>9 submit an application for what activity is expected?</p> <p>10 We asked the BIA, can you please describe, you know,</p> <p>11 what is it you want the permit -- what is it you</p> <p>12 want us -- what is the concern? The BIA didn't</p> <p>13 respond. They just said, submit the permit, and</p> <p>14 we'll tell you. So we never got clarification from</p> <p>15 the Bureau of Indian Affairs what to do in this</p> <p>16 regard.</p> <p>17 So I asked Joan, how do we submit -- what</p> <p>18 are we to do? How do we submit this permit? So to</p> <p>19 me it was more of a -- it was -- we knew that the</p> <p>20 Osage wasn't happy with the project. They asked us</p> <p>21 to submit a permit that wasn't applicable. They</p> <p>22 didn't even give us instructions how to fill it out.</p> <p>23 So if they were really serious about a permit that</p> <p>24 was really necessary, do you think -- wouldn't they</p> <p>25 give us instructions or help us, you know,</p>

<p style="text-align: right;">Page 242</p> <p>1 understand what exactly we were supposed to put in</p> <p>2 the permit? Didn't happen.</p> <p>3 <b>Q So who did you call to find out how to</b></p> <p>4 <b>fill out this application?</b></p> <p>5 A I talked with Joan. Who did I call in</p> <p>6 particular, is I asked Joan, I said, well, how do we</p> <p>7 fill this thing out? And Joan asked, she was the</p> <p>8 point of contact, asked the BIA specifically about</p> <p>9 it, and they said, just fill it out, and we'll let</p> <p>10 you know. I go, well, Joan, how do we fill it out?</p> <p>11 <b>Q So somebody at the BIA told Joan, fill it</b></p> <p>12 <b>out, and we'll let you know?</b></p> <p>13 A Yeah, submit the permit, and we'll let you</p> <p>14 know.</p> <p>15 <b>Q And then she relayed that information to</b></p> <p>16 <b>you?</b></p> <p>17 A Yeah.</p> <p>18 <b>Q Did you ever fill out the application?</b></p> <p>19 A No. We had no instructions, and we had no</p> <p>20 description of what mining was. We had no</p> <p>21 description even from the BIA what was mining. They</p> <p>22 said, fill out the permit, what you are doing, and</p> <p>23 then we'll get back to you. So I said, what do I</p> <p>24 put in here, so that was part of one of the</p> <p>25 challenges that we had.</p>	<p style="text-align: right;">Page 244</p> <p>1 know, extreme measures to try to stop it.</p> <p>2 So we knew that Osage Nation, because they</p> <p>3 didn't like it, that it would be -- that they would</p> <p>4 continue to challenge us along the way. So we knew</p> <p>5 going into the project that we had a party, a party</p> <p>6 that didn't think kindly, so this was clear.</p> <p>7 <b>Q And the stop work order, to the best of</b></p> <p>8 <b>your understanding, who was that from? What entity</b></p> <p>9 <b>was that from?</b></p> <p>10 A Bureau of Indian Affairs.</p> <p>11 <b>Q You understand that the Bureau of Indian</b></p> <p>12 <b>Affairs is a federal agency?</b></p> <p>13 A I said earlier, I didn't really think much</p> <p>14 of it. They asked us to stop work. What work did</p> <p>15 they ask us to stop doing?</p> <p>16 <b>Q I'm sorry. I just asked, do you</b></p> <p>17 <b>understand that the Bureau of Indian Affairs is a</b></p> <p>18 <b>federal agency? That's all I asked.</b></p> <p>19 A I'm uncertain, you know, what --</p> <p>20 <b>Q You are not familiar --</b></p> <p>21 A I'm not familiar with the Bureau of Indian</p> <p>22 Affairs, especially in the specific -- with the</p> <p>23 authority over this project, so -- and are they an</p> <p>24 agency, are they part of the Osage Nation, or if</p> <p>25 it's a federal agency, I wasn't aware.</p>
<p style="text-align: right;">Page 243</p> <p>1 <b>Q And then on the second page of this</b></p> <p>2 <b>exhibit, so that would be page 129 Bates stamped, a</b></p> <p>3 <b>little more, I suppose, than halfway down it says,</b></p> <p>4 <b>"We knew Osage would be a challenging asset, and it</b></p> <p>5 <b>is proving itself as such." And I think you can see</b></p> <p>6 <b>down a little bit below that, it says, "Take care,</b></p> <p>7 <b>Joan Heredia," so I think this is Joan Heredia</b></p> <p>8 <b>saying, "We knew Osage would be a challenging</b></p> <p>9 <b>asset." Can you tell me, to your understanding, did</b></p> <p>10 <b>you know that Osage would be a challenging asset?</b></p> <p>11 A We knew -- look, what I knew about the</p> <p>12 project is the Osage Nation had objections to the</p> <p>13 project, and they tried to stop the project in many,</p> <p>14 many cases. They actually gave the previous owner a</p> <p>15 lot of concerns on whether it wanted to continue</p> <p>16 with the project. When we acquired the project, in</p> <p>17 our due diligence process we looked at the -- what</p> <p>18 were the different aspects of the project. Of</p> <p>19 course, I looked primarily, as I testified before in</p> <p>20 my deposition, is that I looked at the technical</p> <p>21 aspect, but I was part of the support team and</p> <p>22 listened to the discussions on all the different</p> <p>23 activities that the Osage Nation tried to do to stop</p> <p>24 the project. They didn't like the project. They</p> <p>25 didn't want the project, and seemed to use, you</p>	<p style="text-align: right;">Page 245</p> <p>1 <b>Q My goodness. Did you do anything to try</b></p> <p>2 <b>and clarify that understanding?</b></p> <p>3 A As far as my responsibility and aspect of</p> <p>4 the project was to build the project. Joan Heredia</p> <p>5 was the environmental person that talked with the</p> <p>6 Bureau of Indian Affairs. So for my purposes, I</p> <p>7 took direction from our, you know, head of</p> <p>8 regulatory compliance on the aspect of this permit.</p> <p>9 <b>Q Did you ever ask Ms. Heredia if the Bureau</b></p> <p>10 <b>of Indian Affairs and the Osage Nation are one in</b></p> <p>11 <b>the same?</b></p> <p>12 A No.</p> <p>13 <b>Q Did you think it was important to know who</b></p> <p>14 <b>the letter was coming from when you received it?</b></p> <p>15 MR. McCORMACK: Object to the form of the</p> <p>16 question.</p> <p>17 A It came from the Bureau of Indian Affairs.</p> <p>18 MR. McCORMACK: Wait, wait, wait. Object</p> <p>19 to the form of the question, argumentative. You can</p> <p>20 answer.</p> <p>21 <b>Q (By Ms. McClanahan) I'm sorry, did you</b></p> <p>22 <b>answer?</b></p> <p>23 A Yes.</p> <p>24 <b>Q And what was your response?</b></p> <p>25 A It came from the Bureau of Indian Affairs,</p>

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1 so if that's a federal government agency or entity,  
 2 it was an entity that gave us instruction, and I  
 3 asked our regulatory compliance entity to say, what  
 4 is -- what is this -- what is this instruction, what  
 5 is going on with this -- is this an authoritative  
 6 agency that has any authority over our project?  
 7 What are they asking us to do? And she was the  
 8 person who made contact with the BIA to get clarity  
 9 on this. So from my aspect, you know, I've  
 10 testified early of my interpretation of what the  
 11 requirements were.  
 12 **Q But you just testified a moment ago that**  
 13 **it was your understanding that the Osage Nation had**  
 14 **done a lot of things to try and stop the project**  
 15 **over the course of a long period of time; is that**  
 16 **correct?**  
 17 A Yes.  
 18 **Q Do you understand that the United States**  
 19 **government or any agency thereof had done anything**  
 20 **to stop the project before the letter was received?**  
 21 A I'm not aware. Again, the fact that I've  
 22 testified earlier is that the letter was submitted  
 23 to a PR agency or some agency that was posted on  
 24 media before I received it, as well as it had gross  
 25 issues with it, so it was an exaggeration. So what

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1 was the purpose or reason of doing that? Why didn't  
 2 we receive the letter? So the purpose, in our view,  
 3 was to harm the project or stop the project.  
 4 **Q Did you ever ask why you didn't receive**  
 5 **the letter?**  
 6 A I didn't personally ask, no.  
 7 **Q Were there other people carbon copied on**  
 8 **the letter?**  
 9 A I don't recall.  
 10 **Q Okay. Let's take a look at that letter**  
 11 **again, just so we can kind of clarify on this issue.**  
 12 MS. McCLANAHAN: Do you know the exhibit  
 13 number?  
 14 PARALEGAL: Yes, it's 38.  
 15 **Q (By Ms. McClanahan) Is this the letter**  
 16 **that we are talking about when we refer to the**  
 17 **letter?**  
 18 A Yes.  
 19 **Q Okay. And at the bottom of it, let's take**  
 20 **a look and see who was carbon copied on it. Do you**  
 21 **see there that the Tulsa Field Solicitor, that's**  
 22 **one; eastern Oklahoma Regional Director, that's**  
 23 **another one; the Chief of the Osage Nation, and the**  
 24 **Chairman of the Osage Minerals Council; all of those**  
 25 **folks were copied, correct?**

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1 A The letter represents that. I have no  
 2 direct knowledge if they were given the letter or  
 3 not.  
 4 **Q Do you have some reason to dispute that**  
 5 **the United States government copied the Chief of the**  
 6 **Osage Nation on this letter?**  
 7 A It says CC on there. I don't know  
 8 exactly -- if these people received it. It's  
 9 addressed to Mr. Venturini, so it should have gone  
 10 to Mr. Venturini, and -- at least that's who it was  
 11 addressed to, but it certainly didn't make a direct  
 12 path to Mr. Venturini.  
 13 **Q Was this letter mailed to Mr. Venturini?**  
 14 **Did he receive it in standard U.S. mail?**  
 15 A I don't know how he received it.  
 16 **Q Do you know when he received it?**  
 17 A No. The exact date that --  
 18 **Q When --**  
 19 A -- he received it, I don't recall.  
 20 **Q Are you generally familiar that in**  
 21 **business correspondence the CC means that those**  
 22 **people are also copied with a copy of the letter?**  
 23 A Yes, I'm aware of this.  
 24 **Q Okay. So if the Chief of the Osage Nation**  
 25 **received a copy of the letter that was**

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1 **simultaneously mailed to Mr. Venturini, is it**  
 2 **possible that the Chief of the Osage Nation posted**  
 3 **the letter before it reached Mr. Venturini?**  
 4 A I suppose it's possible.  
 5 **Q Is that the fault of the United States**  
 6 **government?**  
 7 A Is it the fault of the United States  
 8 government? What would be the purpose, the reason  
 9 to post it in such a way --  
 10 **Q Excuse me. I didn't say the United States**  
 11 **government posted it. Are you aware the United**  
 12 **States government has ever posted this letter?**  
 13 A I don't know who posted it, but it was  
 14 posted prior to when we received it.  
 15 **Q You don't recall?**  
 16 A I didn't say that. I said, I don't know  
 17 who posted it or who gave this information to  
 18 outlets and that they required a problem with it,  
 19 other than it wasn't -- it certainly wasn't us, and  
 20 it was before we had received it.  
 21 **Q So how do you know that this was posted**  
 22 **online? Who told you that?**  
 23 A Six, seven years ago I remember that we  
 24 got second -- hey, this was posted, and we were  
 25 getting, you know, inquiries about it. So -- we

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1 said, well, we haven't even received the letter yet.  
 2 So it was generally distributed without -- before we  
 3 had received it. So that's how I recall.  
 4 **Q Well --**  
 5 A The specifics of where it went seven years  
 6 ago, I can't remember.  
 7 **Q Do you have any information that it was**  
 8 **generally distributed before it was also posted to**  
 9 **Mr. Venturini?**  
 10 A I don't -- as I said before, I wasn't the  
 11 author of this letter. What I'm testifying is, we  
 12 didn't receive the letter before it was -- before  
 13 others found out about it. I don't know if these  
 14 people on CC, if they got it or not. I didn't mail  
 15 it to them. I wasn't responsible to mail it to  
 16 them, and I have no idea if they received it. What  
 17 I do know is that it was widely posted before we had  
 18 received it, so we were caught off guard because we  
 19 didn't receive this letter before it was out to  
 20 media.  
 21 **Q Does the fact that --**  
 22 A (Inaudible.)  
 23 **Q -- that you were caught off guard -- and I**  
 24 **take it you think that seems very unfair?**  
 25 A That is --

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1 **Q Am I correct in that assumption?**  
 2 A No, I don't think it's unfair. I think  
 3 it's -- it's a -- because it has inaccuracies, it  
 4 didn't give us the opportunity to explain, to  
 5 address it before it was posted to outlets. So it's  
 6 more of a PR campaign to discredit the project,  
 7 because it has in here things that are not correct.  
 8 So do I think that that's -- that's -- do I think  
 9 that's not good? Yes. I think if the Bureau of  
 10 Indian Affairs is going to write a letter and submit  
 11 something, they should verify that the content in it  
 12 is correct, and somehow it didn't happen. And then  
 13 it was distributed and got into PR, and we didn't  
 14 receive it. So we were being asked information that  
 15 was not correct. Do I think that --  
 16 (Simultaneous speakers.)  
 17 **Q (By Ms. McClanahan) Are you saying you**  
 18 **never --**  
 19 A -- no, I don't.  
 20 **Q Are you saying you --**  
 21 A (Inaudible.)  
 22 **Q -- never received the letter?**  
 23 A No, we received the letter. We just  
 24 received the letter --  
 25 **Q Do you know when you received the letter?**

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1 A I don't know the exact date of when we  
 2 received the letter, no. I just know that it was  
 3 afterwards, that it was distributed with other  
 4 parties including media.  
 5 **Q Are you aware that mail reaches recipients**  
 6 **at different times?**  
 7 MR. McCORMACK: Object to the form of the  
 8 question, argumentative. You can answer.  
 9 A Am I aware that mail gets to people at  
 10 different times?  
 11 **Q (By Ms. McClanahan) Yes.**  
 12 A Yes.  
 13 **Q Do you think that a letter that's sent**  
 14 **from Tulsa, Oklahoma, might reach the Osage Nation**  
 15 **in Osage County, Oklahoma, a day or two quicker than**  
 16 **it would reach Mr. Venturini in Andover,**  
 17 **Massachusetts?**  
 18 MR. McCORMACK: Object to the form of the  
 19 question, speculative, argumentative. You can  
 20 answer.  
 21 A I have no idea if it's one or two days.  
 22 My understanding, it was greater than a week, so it  
 23 wasn't one or two days. It was a long period of  
 24 time before we actually received this letter and  
 25 before it was broadcast to the whole community, so,

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1 yeah, that's -- so it wasn't a one/two day event.  
 2 **Q (By Ms. McClanahan) So that series of**  
 3 **events, where you feel like it was unfairly**  
 4 **broadcast, did that cause you to take the letter**  
 5 **less seriously than you might have?**  
 6 A I wouldn't say -- again, you are putting  
 7 words in my mouth. Did I say it's unfairly  
 8 broadcast? I said it was inappropriate -- or not  
 9 proper protocol to broadcast or submit a letter that  
 10 would have been addressed to us, that has  
 11 inaccuracies, so that it would be cleaned up or at  
 12 least clarified before it got distributed to the  
 13 public. And it should have been the responsibility  
 14 of the Bureau of Indian Affairs to properly  
 15 represent the activities that were going on at the  
 16 project. The Bureau of Indian Affairs didn't do  
 17 that. So --  
 18 **Q But you don't know --**  
 19 (Simultaneous speakers.)  
 20 A (Inaudible.)  
 21 **Q -- who posted this letter, do you?**  
 22 A I do not.  
 23 **Q Did you ever see it online?**  
 24 A I recall, yeah, I did. I was able to --  
 25 but I don't remember the -- because I was told about

<p>Page 254</p> <p>1 it, and I'm like, yeah, that's -- so, yeah, I saw.  2 That's when we said, well, we haven't received this  3 yet, we are going to receive it, so while we receive  4 it, you know, let's address it.  5 <b>Q All right. I have one final exhibit, and</b>  6 <b>I do not think this is already an exhibit. So let's</b>  7 <b>take a look at Osage Wind PRIV-000258. We're going</b>  8 <b>to move down a little more than halfway on that</b>  9 <b>first page.</b>  10 (Exhibit 118 marked for identification.)  11 <b>Q (By Ms. McClanahan) Do you see the email</b>  12 <b>there from Joan Heredia to you?</b>  13 A Yes.  14 <b>Q Okay.</b>  15 MS. McCLANAHAN: And then actually just a  16 little bit onto the next page, because that email  17 continues. There we go. That's fine. That will  18 do.  19 <b>Q (By Ms. McClanahan) So this appears to be</b>  20 <b>an email to you with a bunch of people carbon</b>  21 <b>copied, and it's from Joan Heredia. Do you see the</b>  22 <b>sentence there on the start of the second page there</b>  23 <b>that says, "We need to work our way through this --</b>  24 <b>or through it and keep record of our compliance and</b>  25 <b>legal evaluation." So were records kept of Enel's</b></p>	<p>Page 256</p> <p>1 she's -- if it was specific for our construction  2 contractor, I believe she would have said it. I  3 think her point here is, being the head of permits,  4 is to keep records of requirements that we have in  5 our permit, which we did.  6 <b>Q Okay. And you're right, reading this</b>  7 <b>alone is maybe a little broad, so let's look at the</b>  8 <b>context of this email. We can go -- I don't know</b>  9 <b>how that very bottom page actually looks, but if you</b>  10 <b>go all the way down -- and this is how it was</b>  11 <b>produced to us, so there are a few blank boxes and</b>  12 <b>things like that.</b>  13 <b>So at the beginning of the email chain</b>  14 <b>there is a copy of the letter, again, the one that</b>  15 <b>we've been talking about, and that letter is dated</b>  16 <b>October 9th, 2014; is that right?</b>  17 A That's what it says, yes.  18 <b>Q Okay. And do you see on that particular</b>  19 <b>copy, if you go down --</b>  20 MS. McCLANAHAN: I'm sorry, Michelle. Go  21 down a little bit there.  22 <b>Q (By Ms. McClanahan) Do you see the carbon</b>  23 <b>copy list there as well?</b>  24 A Yes.  25 <b>Q Do you see the little checkmark next to</b></p>
<p>Page 255</p> <p>1 <b>compliance?</b>  2 A I'm just reading the paragraphs if you  3 don't mind.  4 MR. McCORMACK: I thought my router had  5 gone out again. Sorry.  6 A So it's a message from Joan to me. "We  7 need to keep records of our compliance and legal  8 evaluation." Sure. I mean, I think when it says,  9 We need to work through this, which we did work  10 through it, we need to keep record -- keep records  11 of the activities we're doing, the excavation, the  12 activities we're doing, of our compliance,  13 compliance to our permit obligations that we thought  14 that at the time were necessary, and legal  15 evaluation, which we attended to -- which we  16 eventually did give, so, yes.  17 <b>Q And was it your understanding also that</b>  18 <b>IEA would be keeping records of compliance?</b>  19 A Well, keeping record of compliance is a  20 very broad definition -- or broad aspect, so you  21 have the head of environmental compliance, so  22 keeping compliance would be more a compliance with  23 permits. So I don't think it's the intention here  24 for Joan to say, hey, we need to keep -- IEA needs  25 to be keeping records of compliance, because</p>	<p>Page 257</p> <p>1 <b>the Chief, Osage Nation?</b>  2 A Yes.  3 <b>Q Okay. And then we're going to just move</b>  4 <b>up a little bit. There is a redacted, I guess, I</b>  5 <b>don't really know, box there, signature block, we</b>  6 <b>can move up past that, and it's --</b>  7 MS. McCLANAHAN: I apologize. We have our  8 Wednesday tornado. If that's troublesome to the  9 court reporter, I can wait. It will go off in a  10 minute.  11 <b>Q (By Ms. McClanahan) Do you see the part</b>  12 <b>that says, "Rob, Matt and Geoff, below is a letter</b>  13 <b>that Ryan Ray provided me from the Tribe website.</b>  14 <b>Someone should pass this along to EGP." So in</b>  15 <b>particular, this trail of emails is related to that</b>  16 <b>letter from Robin Phillips of the BIA to ENGPA</b>  17 <b>(sic), asking them to stop work. Now, if you move,</b>  18 <b>you know, further up the chain and you said you see</b>  19 <b>Joan Heredia's comment, does that impact your</b>  20 <b>understanding of what she means when she said, "We</b>  21 <b>just need to work our way through this -- through it</b>  22 <b>and keep record of our compliance and legal</b>  23 <b>evaluation"?</b>  24 A I still believe that that's -- in context  25 is compliance of our permit obligations.</p>

<p>Page 258</p> <p>1 <b>Q Your permit obligations?</b></p> <p>2 A Yes. Joan is the head of environmental</p> <p>3 compliance, so she's said, we need to work, we need</p> <p>4 to understand -- so we have an entity that wrote</p> <p>5 this letter that says, hey, we -- you know, we need</p> <p>6 to address this issue. This is her as a permitting</p> <p>7 agency, would be her responsibility to assess the</p> <p>8 situation. She is, again, the head of environmental</p> <p>9 compliance. So she said, okay. She's looked at it</p> <p>10 and says, we need to figure out what this is about,</p> <p>11 we need to keep a record of all the different things</p> <p>12 we're doing and complying -- my interpretation</p> <p>13 certainly from -- getting from Joan would be</p> <p>14 compliance of permits, that we're doing certain</p> <p>15 things, and we need to get a legal evaluation of the</p> <p>16 situation. Again, which we did. So, no, no concern</p> <p>17 here in what this sentence says.</p> <p>18 <b>Q So no concern here -- I'm sorry, what was</b></p> <p>19 <b>the end of that sentence?</b></p> <p>20 A No concern of what this sentence says or</p> <p>21 did we do -- yes, we worked on it as a team, we --</p> <p>22 records of our compliance with permits, that's my</p> <p>23 interpretation, and we did a legal evaluation. We</p> <p>24 did all of those things.</p> <p>25 <b>Q So where it says, "keep record of our</b></p>	<p>Page 260</p> <p>1 <b>Q Did you --</b></p> <p>2 A -- record of every little detail, it's --</p> <p>3 we kept records to meet the compliance of the</p> <p>4 project.</p> <p>5 <b>Q Did you keep records of the excavated</b></p> <p>6 <b>material?</b></p> <p>7 A That's a broad question. Do you have a</p> <p>8 specific record that you're chatting about? Did we</p> <p>9 excavate a certain foundation? Yes. Do we keep</p> <p>10 records? What exact records would you be concerned</p> <p>11 with?</p> <p>12 <b>Q Did you keep records that would reflect</b></p> <p>13 <b>the volume of material excavated at a particular</b></p> <p>14 <b>site?</b></p> <p>15 A I'm not sure if we kept records of a</p> <p>16 volume of a particular site, nor do I really</p> <p>17 believe -- I'm not sure how necessary it would be.</p> <p>18 Why? Because you have a site, an excavation, you</p> <p>19 have a size of the area that was excavated, so it</p> <p>20 can be simply calculated of the volume excavated</p> <p>21 from that site. So in that regard, as far as I</p> <p>22 understand, the excavation sites were excavated per</p> <p>23 drawing and per -- and then from there it's --</p> <p>24 <b>Q So you did not keep records of the</b></p> <p>25 <b>excavation site, but would rely upon the hole size</b></p>
<p>Page 259</p> <p>1 <b>compliance," where would I go if I wanted to see</b></p> <p>2 <b>records of compliance that she might have been</b></p> <p>3 <b>referring to?</b></p> <p>4 A The activities associated with this, which</p> <p>5 was the excavation, you know, the activities of the</p> <p>6 schedule, what we were doing, compliance with</p> <p>7 existing permits, special use permits, all of the</p> <p>8 permits, and then we, of course, got into the</p> <p>9 discussion of whether this is mining or not, so</p> <p>10 compliance with mining, were we moving rock, were we</p> <p>11 taking rock off site, were we selling this rock</p> <p>12 commercially, so compliance with those type of</p> <p>13 things, yes. So do we need to keep records? Yes.</p> <p>14 <b>Q So you were keeping good records about the</b></p> <p>15 <b>kinds of rocks that you were encountering?</b></p> <p>16 A I didn't say that. That wasn't required.</p> <p>17 <b>Q Were you keeping good records about what</b></p> <p>18 <b>happened to the excavated material?</b></p> <p>19 A When you say -- let's see, were we keeping</p> <p>20 records of excavated material. As far as my</p> <p>21 knowledge, we kept records that we were required to</p> <p>22 keep, the records of -- that, you know, permits and</p> <p>23 activities that we were required to do in reference</p> <p>24 to our permits, do we keep records of such? Yes, to</p> <p>25 my knowledge. Do we keep --</p>	<p>Page 261</p> <p>1 <b>that was in the plan; is that correct?</b></p> <p>2 A I'm not sure what you mean by keeping</p> <p>3 records of an excavated site. It's not --</p> <p>4 <b>Q Well, let me ask this --</b></p> <p>5 A -- necessary to -- what exact records --</p> <p>6 I'm not referring -- I don't understand what you are</p> <p>7 referring to, records we would normally keep, that</p> <p>8 would be customary of a project.</p> <p>9 <b>Q Well, and I'm not talking about normal or</b></p> <p>10 <b>customary records. I'm talking about records on the</b></p> <p>11 <b>Osage and in response to this letter that you</b></p> <p>12 <b>received. So were you keeping records about the</b></p> <p>13 <b>volume of materials excavated and the type of</b></p> <p>14 <b>materials excavated?</b></p> <p>15 MR. McCORMACK: Object to the form, asked</p> <p>16 and answered, actually on several occasions today,</p> <p>17 but you can answer it again.</p> <p>18 A No, we didn't keep volumes of material</p> <p>19 excavated. We did geotechnical investigations that</p> <p>20 showed the rock subsurface conditions that we would</p> <p>21 expect to encounter. We excavated the foundations</p> <p>22 per the engineering drawings, so we generally had</p> <p>23 the rock conditions we knew we were going to</p> <p>24 encounter or we did encounter, and the volume that</p> <p>25 we excavated were consistent to the requirement of</p>

<p>Page 262</p> <p>1 the construction contract and the engineering 2 requirements.</p> <p>3 <b>Q (By Ms. McClanahan) But as I recall,</b> 4 <b>correct me if I'm wrong on this account, I mean, you</b> 5 <b>originally planned to blast 27 sites and not the 82</b> 6 <b>that you wound up blasting, so those geotechnical</b> 7 <b>records that you're referring to might not be the</b> 8 <b>most accurate?</b></p> <p>9 A I was expecting Mr. McCormack to say 10 something.</p> <p>11 <b>Q Is that correct?</b></p> <p>12 A I've already addressed this, clearly. So, 13 no, it's not correct. So the -- just because the 14 site, we had to blast more rocks, the geotechnical 15 investigation report clearly identifies that the 16 rock blasting was -- was not necessary from a 17 geotechnical perspective. The contractor had 18 challenges with keeping on schedule and was 19 struggling breaking the rock apart through the 20 excavations. So the contractor suggested to us, in 21 real time that we're trying to keep the project 22 schedule, hey, these things have to be blasted.</p> <p>23 We subsequently looked at the data and 24 found out that actually it didn't need to be. So 25 the contractor did search and works that, after the</p>	<p>Page 264</p> <p>1 A Yes.</p> <p>2 <b>Q And so you reported to Maria and Salvatore</b> 3 <b>that you've actually walked the site and that the</b> 4 <b>report -- the geotechnical report did not represent</b> 5 <b>the actual conditions observed at the site, correct?</b></p> <p>6 A Yes.</p> <p>7 <b>Q But you did not keep records of the</b> 8 <b>geotechnical conditions that did exist?</b></p> <p>9 A The core samples were taken, so you have 10 two different situations here. You have -- for me 11 representing project management and the actual 12 aspect of execution of project. You've got Maria, 13 who is heading the engineering, so you have -- I 14 have looked at a couple of projects or a couple of 15 sites, and I saw that the rock formation that 16 existed there and the need to -- to break it apart, 17 but what I saw was, of course, the material after 18 it's been blasted.</p> <p>19 So, you know, there's this balance 20 between, you know, engineering of record and actual 21 sites, and then you have the contractor's commercial 22 aspect with the aspect -- commercial aspect with the 23 project and wanting to, one, create a commercial 24 opportunity to get paid more, as well as increase 25 the schedule.</p>
<p>Page 263</p> <p>1 fact, we found out that wasn't necessary. That's 2 what the engineering documents supported. The 3 engineering documents supported that our data was 4 correct, and there was commercial reasons for the 5 contractor to blast more than necessary. That's 6 what I testified on.</p> <p>7 MS. McCLANAHAN: I'm sorry. Could we pull 8 up Exhibit 106, please? I think we've already 9 looked at this exhibit.</p> <p>10 A There's still nothing on my end.</p> <p>11 <b>Q (By Ms. McClanahan) We're working on it.</b> 12 <b>We're going to go down a little ways. Do you recall</b> 13 <b>looking at this exhibit? I think you looked at it</b> 14 <b>with both me and with Ms. Nagle.</b></p> <p>15 A Yes.</p> <p>16 <b>Q Okay. Do you see the sentence -- it</b> 17 <b>says -- well, it starts off, "I am aware of the</b> 18 <b>report and have reviewed it," and then you say, "I</b> 19 <b>was -- also attended the November 11th project</b> 20 <b>review meeting and personally inspected many of the</b> 21 <b>foundations and saw the material that was removed</b> 22 <b>from the excavations. Overall, the reality is the</b> 23 <b>report and its conclusions did not represent the</b> 24 <b>actual conditions observed at the site." Did you</b> 25 <b>write that?</b></p>	<p>Page 265</p> <p>1 So the ones that I looked at, I thought it 2 was quite -- I thought it was quite rocky, but based 3 on the professional expertise that we have, who -- 4 the engineering team who are engineers, I'm not a 5 civil engineer. I'm not a rock expert. So I'm a 6 project manager that questioned it, but from the 7 experts who analyzed it and wrote a report on it and 8 a substantive report on it, their conclusions was -- 9 who are the experts, that it wasn't necessary to 10 blast all of these foundations. To our -- again, it 11 was relatively -- it was, as they say, Monday 12 morning quarterbacking, because a lot of these 13 things we had to do anyway, because we've already 14 done it.</p> <p>15 MS. McCLANAHAN: Could I ask the court 16 reporter to read back the actual question that I 17 asked?</p> <p>18 (The requested portion was read back.)</p> <p>19 <b>Q (By Ms. McClanahan) Did you keep records</b> 20 <b>regarding what you observed at the site or not?</b></p> <p>21 A We kept records of the core samples that 22 were taken from the sites that were excavated, were 23 kept, yes.</p> <p>24 <b>Q Did you keep any other records as you</b> 25 <b>walked along the site there?</b></p>

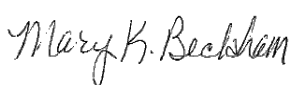
<p>Page 266</p> <p>1 A Not that I'm aware of.</p> <p>2 <b>Q You personally inspected the site. You</b></p> <p>3 <b>said you personally inspected many of them, but you</b></p> <p>4 <b>kept no records?</b></p> <p>5 MR. McCORMACK: Object to the form of the</p> <p>6 question, argumentative, inconsistent with prior</p> <p>7 testimony, but go ahead. You can answer.</p> <p>8 A Yeah, I inspected a few of the sites. I'm</p> <p>9 not a civil expert.</p> <p>10 <b>Q (By Ms. McClanahan) Did you inspect a</b></p> <p>11 <b>few, or did you inspect many?</b></p> <p>12 A I think few and many are just one and the</p> <p>13 same.</p> <p>14 <b>Q They are the same to you?</b></p> <p>15 A Yes.</p> <p>16 <b>Q And what was the purpose for this email to</b></p> <p>17 <b>these two folks on December 2nd, 2014?</b></p> <p>18 A It's an internal document. There's always</p> <p>19 the struggle, especially when you have a change</p> <p>20 order. We had a cost -- we had a cost component of</p> <p>21 \$2 million being requested of the contractor, so we</p> <p>22 had the request, a commercial aspect of the</p> <p>23 contractor doing the work, and we had an engineering</p> <p>24 entity that stated this is the conditions of record.</p> <p>25 So me, as a project manager, I'm trying to</p>	<p>Page 268</p> <p>1 A I've been there. Again, I'm not an</p> <p>2 expert. I visited a couple of sites, but I didn't</p> <p>3 look at all of the sites that were excavated. The</p> <p>4 contractor represented it required much more work</p> <p>5 than necessary to excavate the foundations.</p> <p>6 <b>Q But even though the conditions were</b></p> <p>7 <b>different than the -- the reality was different than</b></p> <p>8 <b>the conditions that were in this report, nobody kept</b></p> <p>9 <b>any records about how they were different?</b></p> <p>10 MR. McCORMACK: Object to the form of the</p> <p>11 question, argumentative and inconsistent with prior</p> <p>12 testimony, but you can answer again.</p> <p>13 A I think it's -- again, what was the -- I</p> <p>14 think I've made it really clear, part of the report</p> <p>15 date was December, the activity date of the</p> <p>16 excavation was September, October, November, so, you</p> <p>17 know, knowing we had a discrepancy in report, this</p> <p>18 was after the fact, so I was trying to understand</p> <p>19 why we had this cost discrepancy. The report came</p> <p>20 after it was already done. So since the report came</p> <p>21 after it was done, it's information I got later. So</p> <p>22 why would I have kept records of that activity when</p> <p>23 the report came later? So, no, it wasn't -- it</p> <p>24 wasn't an issue until like, well, how did we get</p> <p>25 this wrong.</p>
<p>Page 267</p> <p>1 ascertain, here's the existing conditions, here's</p> <p>2 what the geotechnical report says. So why is there</p> <p>3 this difference in cost -- or why is there a</p> <p>4 difference in activity that led to this difference</p> <p>5 in cost? So it was an internal document debating</p> <p>6 between project management and engineering, how did</p> <p>7 we get to this discrepancy between these two</p> <p>8 activities.</p> <p>9 <b>Q And one point that you made in this</b></p> <p>10 <b>conversation, and you actually underlined it, it's</b></p> <p>11 <b>the only part of your email that I see underlined is</b></p> <p>12 <b>that the report that was created before "did not</b></p> <p>13 <b>represent the actual conditions observed at the</b></p> <p>14 <b>site." Correct?</b></p> <p>15 A That's -- that's -- that was the</p> <p>16 representation from the contractor.</p> <p>17 <b>Q That was a representation from the</b></p> <p>18 <b>contractor?</b></p> <p>19 A The contractor was the one doing the work.</p> <p>20 <b>Q But the sentence right before it, you say,</b></p> <p>21 <b>I personally inspected, I saw the material removed.</b></p> <p>22 <b>"The reality is that the report and its conclusions</b></p> <p>23 <b>did not represent the actual observed -- conditions</b></p> <p>24 <b>observed at the site." That's not the contractor.</b></p> <p>25 <b>That's you saying that I've been there, correct?</b></p>	<p>Page 269</p> <p>1 <b>Q Did you start keeping records after</b></p> <p>2 <b>receiving the Bureau of Indian Affairs' letter to</b></p> <p>3 <b>stop work?</b></p> <p>4 A What records would you -- are you</p> <p>5 referring to?</p> <p>6 <b>Q About your excavation and/or crushing</b></p> <p>7 <b>operations.</b></p> <p>8 A We kept records of the activities that we</p> <p>9 did, the foundations that we dug, the foundations</p> <p>10 that need to be blasted.</p> <p>11 <b>Q Did you keep records about how much</b></p> <p>12 <b>material was crushed or processed through a crusher?</b></p> <p>13 A I expected Mr. McCormack -- I've already</p> <p>14 addressed this question.</p> <p>15 <b>Q You've addressed the question of asking</b></p> <p>16 <b>whether or not you kept records of the amounts</b></p> <p>17 <b>crushed after you received the letter from the</b></p> <p>18 <b>Bureau of Indian Affairs? I guess I don't recall</b></p> <p>19 <b>that answer. Can you tell me again? Did you</b></p> <p>20 <b>keep --</b></p> <p>21 A We did not keep records --</p> <p>22 <b>Q Okay.</b></p> <p>23 A -- of how much rock we crushed. It's not</p> <p>24 ordinarily customary to do. There was a request to</p> <p>25 do it. In my multiple wind turbine projects that</p>

<p>Page 270</p> <p>1 I've built all over North America, Oklahoma, all  2 over the world, have I kept any records of  3 foundation rock material? No. Have I ever required  4 to get a construction permit for the excavation of  5 rock or crushing rock at any project that I've ever  6 built? No. Is it a customary practice --  7 <b>Q Have you ever --</b>  8 A -- practice to keep records? No.  9 <b>Q Have you ever received a stop work order</b>  10 <b>from a federal agency on one of your sites?</b>  11 A No.  12 <b>Q So this --</b>  13 A (Inaudible.)  14 <b>Q -- project seems to be different. Did you</b>  15 <b>know when the United States filed a lawsuit against</b>  16 <b>the wind developer?</b>  17 A No.  18 <b>Q You have no idea when that occurred?</b>  19 A My responsibility, like I said, I built  20 the project, and my understanding of the lawsuit  21 that was filed was after some time, and then I  22 had -- actually had moved and moved my  23 responsibility to South Africa.  24 <b>Q So it's your understanding that the</b>  25 <b>lawsuit was filed after you had already moved away</b></p>	<p>Page 272</p> <p>1 Mr. Price for trial, so I have no questions now.  2 But you know what that means, Mr. Price, it means  3 you are free to go.  4 THE WITNESS: It's dark time. Thank you.  5 THE VIDEOGRAPHER: We are off the record  6 at 12:24 p.m. central time.  7 (DEPOSITION CONCLUDED AT 12:24 P.M.)  8  9  10  11  12  13  14  15  16  17  18  19  20  21  22  23  24  25</p>
<p>Page 271</p> <p>1 <b>from Osage Wind project?</b>  2 A I was doing other projects, and it was  3 handed over to operations, so the activities of  4 whatever activity -- the legal aspects, I wasn't  5 directly involved with.  6 <b>Q But you were involved in November of 2014,</b>  7 <b>weren't you?</b>  8 A Yes.  9 <b>Q Well, that's when the lawsuit was filed.</b>  10 <b>Did nobody make you aware there was a lawsuit?</b>  11 A I don't know if it was filed back then. I  12 knew if there was information they were asked, I  13 provided it, but, again, it wasn't my aspect -- my  14 responsibility was the building of the project, and  15 when a lawsuit was filed, I don't remember. A lot  16 of things have happened in the last seven years.  17 <b>Q So you were in charge of the execution of</b>  18 <b>the contract, isn't that right?</b>  19 A Yes.  20 <b>Q And nobody made you aware that a lawsuit</b>  21 <b>was filed regarding the project in November of 2014?</b>  22 A I don't recall.  23 MS. McCLANAHAN: That's all I have.  24 MR. McCORMACK: Okay. Thank you. I will  25 say this, we will reserve all of our questions for</p>	<p>Page 273</p> <p>1 JURAT  2 UNITED STATES/OSAGE MINERALS COUNCIL VS OSAGE WIND  3 JOB FILE NO. 151737  4 STATE OF OKLAHOMA  5 SS  6 COUNTY OF TULSA  7 I, BILL PRICE, do hereby state under oath  8 that I have read the above and foregoing deposition  9 in its entirety and that the same is a full, true  10 and correct transcription of my testimony so given  11 at said time and place, except for the corrections  12 noted.  13  14 _____  15 Signature of Witness  16  17  18 Subscribed and sworn to before me, the  19 undersigned Notary Public in and for the State of  20 Oklahoma by said witness, BILL PRICE, on this  21 _____ day of _____, 2021.  22  23 _____  24 NOTARY PUBLIC  25 MY COMMISSION EXPIRES: _____</p>

Bill Price

7/21/2021

70 (274 - 275)

<p>1 ERRATA SHEET</p> <p>2 UNITED STATES/OSAGE MINERALS COUNCIL VS OSAGE WIND</p> <p>3 DEPOSITION OF BILL PRICE</p> <p>4 REPORTED BY: MARY K. BECKHAM, CSR RPR</p> <p>5 DATE DEPOSITION TAKEN: JULY 21, 2021</p> <p>6 JOB FILE NO. 151737</p> <p>7 PAGE LINE IS SHOULD BE</p> <p>8 _____</p> <p>9 _____</p> <p>10 _____</p> <p>11 _____</p> <p>12 _____</p> <p>13 _____</p> <p>14 _____</p> <p>15 _____</p> <p>16 _____</p> <p>17 _____</p> <p>18 _____</p> <p>19 _____</p> <p>20 _____</p> <p>21 _____</p> <p>22 _____</p> <p>23 _____</p> <p>24 _____</p> <p>25 _____</p>	<p>Page 274</p>
<p>1 CERTIFICATE</p> <p>2 STATE OF OKLAHOMA</p> <p>3 SS</p> <p>4 COUNTY OF TULSA</p> <p>5 I, Mary K. Beckham, Certified Shorthand</p> <p>6 Reporter within and for the State of Oklahoma, do</p> <p>7 hereby certify that the above-named BILL PRICE was</p> <p>8 by me first duly sworn to testify the truth, the</p> <p>9 whole truth, and nothing but the truth, in the case</p> <p>10 aforesaid; that the above and foregoing videotaped</p> <p>11 deposition was by me taken in shorthand and</p> <p>12 thereafter transcribed; that the same was taken,</p> <p>13 pursuant to stipulations hereinbefore set out; and</p> <p>14 that I am not an attorney for nor relative of any of</p> <p>15 said parties or otherwise interested in the event of</p> <p>16 said action.</p> <p>17</p> <p>18 IN WITNESS WHEREOF, I have hereunto set my</p> <p>19 hand and official seal this 21st day of July, 2021.</p> <p>20</p> <p>21 </p> <p>22 _____</p> <p>23</p> <p>24 Mary K. Beckham, CSR, RPR</p> <p>25 CSR No. 01053</p>	<p>Page 275</p>

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